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No. (1)

Supreme Court, U.S.
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In The

Supreme Court of the United States

DR. ADEL AL-JURF,

Petitioner,

v.

BOARD OF REGENTS, STATE OF IOWA,

Respondent.

On Petition For Writ Of Certiorari To The Iowa Court Of Appeals

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Are procedural due process notice requirements violated when a state university fails to provide a tenured physician with notice that withdrawn allegations will be used as evidence against him and in support of its decision to terminate?

PARTIES TO THE PROCEEDING

The caption of the case as set forth on the cover of this Petition contains the names of all the parties to this proceeding.

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The July 12, 2007 opinion of the Iowa Court of Appeals, whose judgment is herein sought to be reviewed, is reported at 737 N.W.2d 327 (Iowa Ct.App. 2007) and is reprinted in the separate Appendix to this Petition, App. 1. The September 10, 2007 Order of the Iowa Supreme Court denying further review is reprinted in the separate Appendix to this Petition, App. 46. The Ruling on Petition for Judicial Review by the Iowa District Court for Polk County is also reprinted in the Appendix to this Petition, App. 8. Finally, the report of the Faculty Judicial Panel and the Decision of University of Iowa President David Skorton affirming the Panel are reprinted in the Appendix to this Petition, App. 48 and 68.

JURISDICTION

The judgment of the Iowa Court of Appeals was entered on July 12, 2007. The Iowa Supreme Court denied further review on September 10, 2007. The jurisdiction of this court is invoked pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Fourteenth Amendment to the United States Constitution which provides as follows:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Dr. Adel Al-Jurf ("Al-Jurf") was a general surgeon, with experience in surgical oncology and a special interest in breast surgery, at the University of Iowa Hospitals & Clinics ("UIHC"). He began his career at UIHC in 1977, subsequently gained tenure and became one of the top earners for the Department of Surgery. In 2003, Dr. Carol Scott-Conner, chair of the Department of Surgery, made a disciplinary complaint to the UIHC Credentials Committee ("Panel") regarding Al-Jurf and later filed a complaint with the University of Iowa Office of Affirmative Action.

On June 13, 2003, University Provost Jon Whitmore issued a Notice of Charges alleging that Al-Jurf violated the University's Professional Ethics and Academic Responsibility Policy. A Faculty Judicial Panel was appointed to hear the complaint. A hearing was held in April 2004. The Panel recommended that

Dr. Al-Jurf not be allowed to return to operating at the UIHC or maintain his position in the Department of Surgery. The Panel's recommendations included dismissal, resignation, or transfer to another position not associated with UIHC.

Al-Jurf appealed the findings to the Office of the President. On January 20, 2005, President David Skorton accepted the Panel's findings. President Skorton rejected the Panel's recommendation that Al-Jurf possibly transfer to another position not associated with UIHC instead finding termination the preferable sanction because Al-Jurf "has not demonstrated the capacity or willingness to change his behavior." (App. 66) On further appeal to the Board of Regents, Al-Jurf's termination was summarily affirmed and a Petition for Judicial Review was filed in the Iowa District Court for Polk County. The District Court affirmed the findings of the Board of Regents. The Ruling on Petition for Judicial Review was appealed to the Iowa Court of Appeals who affirmed on July 12, 2007. On September 10, 2007 the Iowa Supreme Court denied further review. Al-Jurf appeals from the Decision made by the Iowa Court of Appeals.

Al-Jurf raised procedural due process notice arguments in his Reply Brief before the Iowa State Board of Regents, at the state district court level, in his reply brief to the Iowa Court of Appeals and his Application for Further Review to the Iowa Supreme Court. (App. 37)

On June 13, 2003 Provost Jon Whitmore provided Al-Jurf with a Notice of Charges alleging that Al-Jurf violated the University's Professional Ethics and Academic Responsibility Policy by, among other things, engaging in:

> A pattern of unprofessional behavior in the Operating Room documented in January, 2000 and running through August 2001, resulting in a work environment for members of the Department of Anesthesia which led them to consider declining to provide further anesthetic care for your surgical cases. (App. 70)

At the fact-finding hearing the University submitted documentation of a series of problems between Al-Jurf and members of the Department of Anesthesia in 2000 and 2001. (App. 60) However, in his closing remarks at the fact-finding University counsel withdrew those allegations:

> First, regarding the 2000 incident in anesthesia, I want to make clear that's not one of the charges, and we don't ask for a specific finding with respect to those particular faculty and staff. Those incidents were handled informally. There were no charges arising out of them, and it's too long ago for that to be done here.

In post-hearing filings University counsel reiterated that he did not seek findings from the Panel regarding the 2000 anesthesia department incidents:

> These incidents are not specifically identified in the Notice of Charges and the University has not asked the Panel to make specific findings of violations concerning these incidents. However, these incidents date the beginning of a pattern and the provision of notice to Dr. Al-Jurf that certain of his behavior was considered unacceptable.

(App. 60) Despite the withdrawal of these charges the Panel nevertheless relied upon them:

> Without ruling on these incidents individually, we find that taken together, the evidence is sufficient to prove clearly and convincingly an early pattern of repeated behavior in which Dr. Al-Jurf became angry, raised his voice, at times shouted, refused to listen, and acted in an overbearing way toward professional colleagues who were subordinate to him in rank and power.

(App. 75) The Panel also found that Al-Jurf's behavior conduct toward anesthesia department staff was in contravention of University standards of professional behavior. (App. 75)

President Skorton appears to acknowledge that the Panel went too far by noting that incidents regarding the anesthesia department "cannot form an independent basis for discipline in this case." (App. 60) Both the Panel and President Skorton purport to disavow the anesthesia department issues, but rely upon those same incidents to prove notice and as evidence of Al-Jurf's supposed intransigence and

ultimately as justification for the sanction of termination. The Panel specifically found:

- He has long been on notice as to the seriousness of his unprofessional conduct. In 2000, the head of the Department of Anesthesia notified him that unless his behavior changed, they might not continue to provide anesthetic care for him. (App. 108)
- There seems little likelihood that Dr. Al-Jurf's behavior will change. His outbursts have occurred since at least 2000 and probably well before. (App. 109)

President Skorton followed this same rationale:

- I agree with the Panel's observation that there is little likelihood that Dr. Al-Jurf's behavior will change. First, problems continued after he was warned that his employment was in jeopardy. (App. 65)

On appeal, the state district court noted that there were "eleven primary incidents in the record used for support of the six charges considered by the committee." (App. 33) The district court enumerates the eleven incidents; four of which directly involve the 2000 anesthesia department allegations withdrawn at the fact finding hearing. (App. 33) Indeed, the lower court spends three pages of its Ruling detailing the four anesthesia department incidents and includes the withdrawn evidence in reaching its ultimate conclusion that substantial evidence exists to support termination:

> Considering the multiple reports of different staff, nurses, *anesthesiologists*, and fellow doctors shown in the record, considering the *unwavering tone* regarding Dr. Al-Jurf's behavior, and considering the incidents range over a time period of *seven years*, this Court concludes that a reasonable person could have found that clear and convincing evidence exists to support termination. (emphasis added)

(App. 11-14, 35)

The decision from the Iowa Court of Appeals does not address the issues raised by the withdrawn allegations, but simply finds that substantial evidence supports the decision now on appeal. The Iowa Supreme Court in a one sentence Order denied Al-Jurf's request for further review.

REASONS FOR GRANTING THE WRIT

A review of the judgment of the Iowa Court of Appeals will afford this Court the opportunity to clarify the due process notice rights afforded those in Al-Jurf's position; tenured state employees with a protected property interest in their employment. Al-Jurf recognizes that his request for review does not present this Court with a conflict of authority among the courts or a unique or unsettled question of law. However, this Court has frequently recognized the severity of depriving a person of the means of livelihood and review of this case will correct an injustice

visited upon Al-Jurf and enable him to resume providing high quality medical care.

It is undisputed that Al-Jurf was a tenured physician at UIHC who enjoys a property right sufficient to invoke procedural due process protections. *See, Perry v. Sindermann*, 408 U.S. 593, 601 (1972). An essential principle of due process is that a deprivation of life, liberty or property "be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950). Procedural due process guarantees an affected individual the right to some form of hearing, with notice and an opportunity to be heard, before he is divested of his protected interest. *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 542 (1985). The hearing need not be elaborate, but a "tenured public employee is entitled to oral or written notice of the charges against him, ***an explanation of the employer's evidence***, and an opportunity to present his side of the story." *Id.* at 546 (emphasis added).

This Court in *Loudermill* clearly contemplated that when an individual is faced with the potential loss of a protected interest, officials must provide him with notice of the charges against him and any proposed action the official intends to take, based on those charges. *Id.* at 543-546. In this case, the University concedes that with respect to the anesthesia department incidents in 2000 that they were not "specifically identified in the Notice of Charges." (App. 60) The University therefore withdrew them at

the conclusion of the hearing and did not ask the Panel to make specific findings concerning them. (App. 60) Although the University did not seek specific findings they did submit documentation of the incidents into the record and then requested that the incidents be used to prove pattern, notice to Al-Jurf of his prior transgressions and his alleged refusal to change his behavior. The Panel, President Skorton and the District Court all relied upon those incidents for those very reasons.

Al-Jurf was deprived of his due process rights to notice of the charges against him and an explanation of how the anesthesia department incidents would be used. As noted above, the University conceded that the anesthesia department incidents that allegedly occurred in 2000 were "not specifically identified in the Notice of Charges." (App. 60) More importantly Al-Jurf was not given notice and it was never explained to him until the post-hearing briefing that the evidence regarding the anesthesia department incidents would be used for other purposes: pattern, notice about the alleged seriousness of his behavior and to demonstrate his alleged intransigence.

In addition Al-Jurf was also deprived of the right to know that the anesthesia department incidents, and the rationale for their admission and consideration, would form the basis of the decision to impose the ultimate sanction of termination. By not explaining how the withdrawn anesthesia department incidents would be used against him until after the hearing was over, Al-Jurf was deprived of the opportunity to

develop a trial strategy to rebut the covert purpose for which they were offered. Accordingly, he was deprived not only of a the constitutionally required notice, but the concomitant right to present his side of the story in direct response to the purposes for which the incidents were offered.

CONCLUSION

WHEREFORE, Petitioner prays that a Writ of Certiorari issue from this Honorable Court to review the judgment of the Iowa Court of Appeals dated July 12, 2007.

Respectfully submitted,

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DR. ADEL AL-JURF, Petitioner-Appellant, vs. BOARD OF REGENTS, STATE OF IOWA, Respondent-Appellee, UNIVERSITY OF IOWA, Interested Party.

No. 7-409/06-1621

COURT OF APPEALS OF IOWA

2007 Iowa App. LEXIS 828

July 12, 2007, Filed

COUNSEL: Becky Knutson of Davis, Brown, Koehn, Shors & Roberts, Des Moines, for appellant.

Thomas J. Miller, Attorney General and George Carroll, Assistant Attorney General, Des Moines, for appellee.

JUDGES: VOGEL, J. Considered by Sackett, C.J., and Vogel and Miller, JJ.

OPINION BY: VOGEL

OPINION

VOGEL, J.

Dr. Adel Al-Jurf appeals from the ruling on judicial review which affirmed his termination from employment at the University of Iowa Hospitals and Clinics (UIHC). We affirm.

Background Proceedings.

Dr. Al-Jurf is a general surgeon, who began working at the UIHC in 1977 and subsequently

gained tenure, at one time being the top earner for his department. After a series of disturbing incidents, Dr. Carol Scott-Connor, chair of the department of surgery, made a disciplinary complaint to the UIHC Credentials Committee (Surgical Panel) regarding Dr. Al-Jurf's behaviors and she later filed a complaint with the University of Iowa Office of Affirmative Action. Findings were made on May 2, 2003, which served as the basis for Provost Jon Whitmore's resulting ethics complaint, alleging Dr. Al-Jurf had violated the University's Professional Ethics and Academic Responsibility Policy.

After a mediator was appointed but failed to reach a settlement, a faculty judicial commission was appointed to hear the complaint. The faculty commission held a hearing in April 2004, receiving testimony from thirteen witnesses and reviewing, "hundreds if not thousands of pages" of documents. On July 14, 2004, the commission submitted a report finding that Al-Jurf had not committed sexual harassment, violence, or retaliation; however, it did find that he was in violation of the University's standards of behavior by, among other things, vilifying, distressing, and interfering with the work of his colleagues, as well as creating a hostile educational environment for the student residents, impeding learning, and ultimately compromising patient care. The commission recommended that Al-Jurf be terminated from his position in the department of surgery.

Dr. Al-Jurf appealed this matter to the Office of the President. Based on the record made at the

previous hearing, President David Skorton, in a detailed opinion, accepted the commission's findings as well as its recommendation to terminate Al-Jurf. On further appeal to the Board of Regents, Al-Jurf's termination was summarily affirmed and a petition for judicial review was then filed by Dr. Al-Jurf. The district court affirmed the decision of the Board. It concluded that the findings of fact contained in the record were supported by substantial evidence, contained no errors of law, and that the decision was neither irrational, arbitrary, nor capricious. Dr. Al-Jurf appeals from this ruling.

Scope of Review.

Our review is governed by the Administrative Procedure Act. Iowa Code ch. 17A (2005); *Acuity Ins. v. Foreman*, 684 N.W.2d 212, 216 (Iowa 2004). We review the district court's decision by applying the standards of section 17A.19 to the agency action to determine if our conclusions are the same as those reached by the district court. *University of Iowa Hosps. & Clinics v. Waters*, 674 N.W.2d 92, 95 (Iowa 2004). A party challenging agency action bears the burden of demonstrating the action's invalidity and resulting prejudice. Iowa Code § 17A.19(8)(a). This can be shown in a number of ways, including proof the action was ultra vires; legally erroneous; unsupported by substantial evidence in the record, when that record is viewed as a whole; or otherwise unreasonable, arbitrary, capricious, or an abuse of discretion. *See id.* § 17A.19(10).

Analysis.

The faculty commission, and later the University president, found Dr. Al-Jurf had violated two provisions of the University's Professional Ethics and Academic Policy. The first, section 15.4, generally obligates the employee to "show[] due respect for the rights of others to their opinions, . . . refrain [] from personal vilification, and acknowledge[] contributions of others to his or her work." The second provision that the commission found Al-Jurf to have violated, section 15.2, recognizes the faculty member's responsibility for creating a classroom or laboratory climate that is conducive to learning. It further obliges the faculty member to "conduct himself or herself at all times so as to demonstrate respect for the student." According to its Operations Manual, the University bore the burden of proving the allegations pertinent to these provisions by clear and convincing evidence in the record as a whole.

In the portion of his decision concluding Dr. Al-Jurf had violated section 15.4 repeatedly, the president noted incidents with and treatment of Dr. Beth Ballinger, nurse-anesthetist Lynn Fitzpatrick, and nurse Michelle Hostetler. As the bases for finding he had violated section 15.2, the president noted various problems with residents in 2001 that resulted in a petition against Dr. Al-Jurf and an incident with Dr. Yi-Horng Lee. On appeal, Dr. Al-Jurf argues that the "decision of the President, on the noticed charges, was

not supported by substantial evidence in the record as a whole."[1]

"The [agency's] factual findings are binding on this court if supported by substantial evidence." *United Fire & Cas. Co. v. St. Paul Fire & Marine Ins. Co.*, 677 N.W.2d 755, 759 (Iowa 2004). Evidence is substantial if a reasonable person would find it adequate to reach a conclusion. *Simonson v. Snap-On Tools Corp.*, 588 N.W.2d 430, 434 (Iowa 1999). Our inquiry is whether the evidence supports the findings made by the agency, not whether the evidence may support a different finding. *Munson v. Iowa Dep't of Transp.*, 513 N.W.2d 722, 723 (Iowa 1994) (citing *Reed v.. Iowa Dep't of Transp.*, 478 N.W.2d 844, 846 (Iowa 1991)). An appellate court should not consider evidence insubstantial merely because the court may draw different conclusions from the record. *Fischer v. City of Sioux City*, 695 N.W.2d 31, 33-34 (Iowa 2005).

Making a determination as to whether the evidence supporting one position is qualitatively weaker than another piece of evidence is not an assessment for the district court or the court of appeals to make when it conducts a substantial evidence review of an agency decision. *Arndt v. City of Le Claire*, 728 N.W.2d 389, 394 (Iowa 2007). "It is the [agency's] duty as the trier of fact to determine the credibility of the

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[1] While Dr. Al-Jurf frames his argument in several different ways, he essentially rests his appeal on the lack of substantial evidence to support his termination.

witnesses, weigh the evidence, and decide the facts in issue." *Id.* at 394-95.

Upon our review of the record, we conclude, as did the district court, substantial evidence supports the decision now on appeal. Without repeating the specifics of each incident and charge, all of which have been the subject of multiple layers of review, including a thorough twenty-seven page ruling by the district court, each illustrates the hostile, unprofessional, and intimidating nature of Dr. Al-Jurf's interactions with colleagues or students. The incidents evince a lack of respect toward those associates, constitute "vilification," and fostered an unacceptable workplace environment. As such, the University proved by clear and convincing evidence that Dr. Al-Jurf violated section 15.4 ("Responsibilities to Colleagues") of the Professional Ethics and Academic Responsibility policy set forth in the University Operations Manual (UOM).

In addition, we find the incident with Dr. Lee fully supports the finding that Dr. Al-Jurf violated section 15.2 of the UOM, which cautions faculty members to conduct themselves "so as to demonstrate respect for the student" and to create a climate "that encourages the student's endeavors to learn." The 2001 petition from Dr. Al-Jurf's residents exposed his belittling, derogatory, and insulting behavior toward them. The incident with Dr. Lee involved apparent threats and intimidation. The record as a whole supports the findings, as well as President Skorton's concerns, that Dr. Al-Jurf's conduct "threatened the

vitality and health of this particular health care and learning community."

Conclusion.

Whether specifically addressed or not, we have considered each of Dr. AlJurf's contentions and find them to be without merit. The decision to terminate his employment is supported by substantial evidence in the record when viewed as a whole. We therefore affirm.

AFFIRMED.

IN THE IOWA DISTRICT COURT
FOR POLK COUNTY

DR. ADEL AL-JURF., **Petitioner,** **vs.** **BOARD OF REGENTS, STATE OF IOWA,** **Respondent.** **and** **THE UNIVERSITY OF IOWA,** **Interested party.**	**Case No. CV 5882** **RULING ON PETITION FOR JUDICIAL REVIEW**

INTRODUCTION

The above-captioned matter came before the Court on August 15, 2006, on the Petitioner's Application for Judicial Review. After hearing the arguments of counsel and reviewing the court file, including the briefs filed by both parties and the certified record of proceedings below, the Court enters the following ruling:

BACKGROUND FACTS AND PROCEDURAL HISTORY

The following facts were found during the course of proceedings which led to this judicial review action or appear in the record from proceedings below. Dr. Al-Jurf is a general surgeon, with experience in

Surgical Oncology and a special interest in breast surgery, at the University of Iowa Hospitals and Clinics. (UIHC). He began his career in 1977. From that time until 2003 Dr. Al-Jurf practiced surgery with no formal complaints or disciplinary action. He also achieved tenure status as part of his employment and was at one point the top earner for the department.

In 1995 Dr. Carol Scott-Connor [sic] arrived at the UIHC as the head of department of surgery. Dr. Al-Jurf characterizes his relationship with Dr. Scott-Connor [sic] as antagonistic due to competition for breast surgery patients, and attributes most of his problems to a claimed plan by Dr. Scott-Connor [sic] to steal his patients. However, the decisions rendered below did not accept Dr. Al-Jur's [sic] theory but instead terminated his position due to a number of events over a period of years.

The first event, which occurred in 1996, was an annual voluntary survey of the residents under Dr. Al-Jurf's supervision with the following results. When asked if they believed there was a personality clash that inhibited a learning relationship, 10 residents said no. One said yes. The "yes" response indicated that "he is so abusive in the OR that it inhibits interaction on the wards. Medical students have told the residents that they're afraid to scrub in with him. One "no" response added "his personality is a problem but his style is utterly unacceptable." When asked if they believed there was preferential treatment of residents, 7 residents said no and 4 said

yes. The "yes" responses were "the staff tends to favor certain residents," "he openly prefers women medical students and residents but seems to treat them with much hostility, calling them 'sweethearts' and making reference to their 'delicacies.' He has often told them that they need to 'operate like a man,'" "he openly states who his 'better' residents are and refuses to operate with others. He insults women and states that they do not make good surgeons but that 'they tolerate the Bovie on their finger because they're used to heat from the kitchen' (this is a direct quote)." One "no" response stated that Dr. Al-Jurf "treats women differently."

The remainder of the survey contained various suggestions that Dr. Al-Jurf was impatient, undermined the confidence of senior residents, had a temper and verbally assaulted his residents, did not let his residents do the cases they needed to have their "numbers," was degrading and humiliating to residents and students, got frustrated quickly, and insulted the staff. Some residents also stated that they dreaded working with him, put up with "intolerable abusive behavior," and had received complaints from patients and medical students. Also some felt Dr. Al-Jurf had demonstrated how dysfunctional behavior inhibits good patient care. One resident stated that he "should be dismissed from his position immediately." However, they also stated that he was very practical teaching in the OR and on the wards, had excellent technical instruction, was an excellent role model for treating patients with respect and

sensitivity, taught well when time permits, and was very interested in the technical aspects of surgery and helpful in developing technique. Many of the residents listed no complaint on the survey. (Revised Agency Record 2, Page 515: Resident Evaluation of Staff) The petitioner has argued that the 1996 survey was only one of many and alleged that the other yearly surveys generally indicate positive remarks.

The next incident occurred several years later. Heather McClannahan, CST, and Sue Klaasen, staff nurse, reported that on March 20, 2000 as they were prepping a patient; Dr. Al-Jurf entered and had a conflict with the way the patient was being prepped. Heather McClannahan in her written report claimed that Dr. Al-Jurf was "cursing with God's name several times very loudly and patient, was awake . . . Raising his voice with not so nice words . . . Throwing his gloves." Sue Klassen's report alleged that Dr. Al-Jurf was "yelling about the room," that at one point his face was inches from her own, and that it bothered her that the patient was witness to such poor behavior by a surgeon. She also noted that she is "not accustomed to filing these reports". (Revised Agency Record Page 607-609: Professional Behavior Violation Reports)

The third occurrence took place on August 14, 2000. Resident Sheela Thinakaran reported that she received a question regarding the feeding of a patient of Dr. Al-Jurf's from the patient's family. She claims that after she relayed this question to Dr. Al-Jurf by phone, he later entered the SICU, approached her,

grabbed her by the arm, and shouted at her for bothering him. She alleges his behavior to be "disrespectful" and notes that it bothered her very much. (U116: Letter from Sheela Thinakaran to David Brown.) After this event another Doctor, Steve Lillehaug, attempted to stand up for Mrs. Thinakaran and was also yelled at by Dr. Al-Jurf. Finally another physician, Dr. Steven Hata, was called down. He later described it as follows:

> *"I was working in my office, and I was called by a member of our intensive care unit staff to come to bay 3 of the surgical intensive care unit. I was told there was a significant disagreement between one of the surgical intensive care unit intensivists, Dr. Lillehaug, and Dr. Al-Jurf. The person who called was concerned about – it was a very uncomfortable period of time. Apparently Dr. Al-Jurf was very loud in terms of and at the bedside of a patient and having the discussion when – and that's when I left my office and went to the bay 3 of the intensive . . . "* (Steven Hata Depo. P. 7-8)

On October 20, 2000 during a surgery, Dr. Al-Jurf disagreed with Dr. Fred Mensink, an anesthesia resident, regarding transfusion of blood and the use of a vasopressor on a patient under operating room procedure. Dr. Mensink later claimed that Al-Jurf "belittled" him and accused him of moving to Iowa for reasons of money. (U112: Letter from Fred Mensink to David Brown) A witness, Dr. Patrick Duey, stated that Dr. Al-Jurf:

> *"continued to speak very loudly, at times, almost screaming. In my opinion he was incredibly unprofessional in his verbal tone and content. Dr. Mensink at no time raised his voice and continued to try to bring the conversation back to the case at hand, discussing various points about transfusion risks and benefits. I do recall that Dr. Al-Jurf made a statement accusing the anesthesia department at the University of Iowa of killing 2 patients in the last several months. He also made condescending and derogatory statements about Dr. Mensink and why he moved to Iowa."* (U119: Letter from Patrick Duey to David Brown.)

The nurse at the time, Becky Pearson, also supported that version of events, stating that Dr. Al-Jurf was yelling, speaking with disrespect and contempt, implying that Dr. Mensink moved to Iowa because he had a problem, and making rude and accusatory responses. She characterized Dr. Al-Jurf's actions as "the most unprofessional manner I have seen in 20 years in the operating room setting." (U121: Letter from Becky Pearson to Fred Mensink.)

The next incident also involved Dr. Al-Jurf's interaction with the person providing anesthesia. On October 30, 2000 John Aker, the Chief Nurse Anesthetist, claims that during his interaction with Dr. Al-Jurf, Dr. Al-Jurf complained all during the day and at one point asked for Aker's wife's phone number so he could tell her about his behavior in the operating room. Aker described Dr. Al-Jurf as "confrontational"

with the anesthesia team. (U118: Letter from John Aker to David Brown.)

On August 31, 2001 a majority of the residents in the department of surgery presented a petition to the department head alleging Dr. Al-Jurf excluded residents from operations and created a hostile work environment. The petition states as follows:

> *"We, the residents in the Department of Surgery, would like to bring the following matter to your attention regarding Dr. Al-Jurf. He has consistently excluded residents from participating in operations, regardless of the complexity/simplicity of the case or the resident's level of training. He has consistently made derogatory comments to the residents in the operating room, and therefore created a hostile working environment. His behavior and commends* [sic] *have humiliated many residents. This resulted in a number of residents leaving his operating room, one of whom ultimately left the surgical residency program. This has also negatively affected the recruitment of residents into this program. We feel that Dr. Al-Jurf has been detrimental to the resident's education and the integrity of this surgical residency program, and that his role in the Department of Surgery needs to be seriously reevaluated."* (Revised Agency Record 2 Page 521: Resident Petition to Dr. Scott-Conner)

The department guideline provided that residents would perform at least 75% of all cases under

the supervision of the primary surgeon. (Revised Agency Guidelines 2 Page 512: Department of Surgery Principles and Expectations.) Residents must complete a certain number of cases as the primary surgeon in order to be board certified. Dr. John Sharp noted that although complaints by residents have occurred before regarding other staff members, there had never been another petition against another faculty member. (Sharp Deposition Page. 76)

On April 27, 2003 a questionnaire was sent to the senior residents under Dr. Al-Jurf's supervision to determine if there had been improvement. Six of the nine responded. The compiler stated that "overall, the residents feel that the experience of working with Dr. Al-Jurf has not improved since last year's petition." (Revised Agency Record 2: Page 523: Unknown Author's Letter to Dr. John Sharp) When asked why the complaints about Dr. Al-Jurf only began to surface recently, Dr. Sharp said:

> *"The other item about this is it's not 1980 anymore, and I think that the culture has changed, the residents are different, they have different expectations now than they had 15 or 20 years ago. They are less likely to tolerate a lot of the stuff that we tolerated or Dr. Al-Jurf tolerated when he was a resident. It's just a different time and requires that we adjust somewhat the way that we do things."* (Sharp Deposition Page 23)

Another incident involved one of the nurses, Michelle Hostetler. For a time Dr. Al-Jurf and Dr.

Howe shared a single nurse, Mrs. Hostetler. Dr. Al-Jurf expressed concern that a single nurse was not able to provide adequate coverage for both doctors. Dr. Howe felt that Dr. Al-Jurf was pressuring Mrs. Hostetler to quit Dr. Howe's clinic. (Howe Deposition Page 18) On May 23, 2002, and again on June 5, Dr. Al-Jurf took Mrs. Hostetler into an empty examination room to discuss the situation. The staff stated that Dr. Al-Jurf yelled at her so loudly they could hear it from behind closed doors and noted that Mrs. Hostetler was crying when she left. (Revised Agency Record Page 233: Notes by Jane Utech) Dr. Howe felt that Dr. Al-Jurf was treating Mrs. Hostetler badly. However, Michelle Hostetler voluntarily stayed with Dr. Al-Jurf for a length of time and chose not to make a formal report from either incident. She did eventually leave Dr. Al-Jurf. Petitioner describes this as a non-related decision based on a higher salary offer. Furthermore, Dr. Al-Jurf stresses that he was upset with Dr. Howe and not with Mrs. Hostetler. However, he admits shouting at Mrs. Hostetler as a result of his frustration.

In addition to the conflict with their shared nurse, Dr. Howe felt that Dr. Al-Jurf was requesting residents from Dr. Howe' clinic come up and scrub for the sole purpose of disrupting Dr. Howe's clinic. He states that residents were asked to come up "immediately" from Howe's clinic for surgical procedures they were not really required for, and in one case, could not even see. (Howe Deposition Page 51, Revised Agency Record 2 page 599: Letter from James Howe

to Carol Scott-Conner) Dr. Howe also felt that Dr. Al-Jurf was telling new patients to come in on Dr. Howe's clinic day to further inflame the situation. (Howe Deposition Page 51).

In return, Dr. Al-Jurf held some hostility towards Dr. Howe and the administration. On June 6, 2002 Roger Gingrich met with Dr. Al-Jurf. Gingrich described the meeting as follows:

> *"He was cordial and invited me in. He first sought to establish that I knew him as a fair and balanced individual and always hard-working. He then launched into a 40-minute monologue about how badly his department has treated him over the years. 'Not one thank you." He is 'not respected' and this is very difficult coming from his upbringing and cultural background. He presented his view of his earning and number of cases compared to others in the department – in fact, "any other person in the department.' He noted he is one of the most senior members. He suggested that recruiting efforts to the department were 'crazy' – noting that salary offers and positions were inappropriate.*
>
> *Then Peter Jochinsen resigned – 'probably was forced out' and he (AA) was passed over for Peter's position for that 'son-of-a-bitch Howe.' He then railed for 15 minutes against Howe, using SOB and bastard multiple times in an angry and agitated manner. He impugned his surgical skills, his arrogance in asking for a raise, a new parking space and PJ's office. He became most agitated in*

> *describing his 'arrogant and inappropriate' use (taking calls, dealing with letters and appointments, off-hours work, etc.) of Michelle. He repeatedly stated that he could not stand for Howe to share Michelle's nursing services in the clinic.*
>
> *He described himself as able and willing to work along in the CCC. He referred to difficulty working with the residents and 'doesn't need them.' He could see all this* [sic] *patients without a nurse if needed – as long as someone occasionally helped with the scheduling. He indicated he was not a team player' – he is used to working hard all alone."*

(Revised Agency Record Page 232: Roger Gingrich's notes entitled "6-6-02 meeting with Dr. Adel Al-Jurf."

On June 21, 2002 Dr. Scott-Conner wrote a letter to Dr. Al-Jurf stating that because of verbally abusive behavior to staff members in the Clinical Cancer Center, she required him to undergo a mental examination or his clinical privileges would be terminated. She stated that although he had a choice under the bylaws, her preference for the evaluation was the Rush Behavioral Health location in Chicago. He was initially reluctant, but on July 13-15, 2002 Dr. Al-Jurf attended the Rush Presbyterian Hospital institute in Chicago for a mental evaluation. The Rush board found that Dr. Al-Jurf had no serious mental or physical problems that would prevent him from practicing as a surgical physician. They did diagnose him with a narcissistic tendency personality disorder,

although they were not of the opinion that it would impair him as a physician. Among their recommendations was that he attend an anger management class. The recommendation was not followed by Dr. Al-Jurf nor was it ordered by the hospital. Another of Rush's recommendations was that Dr. Al-Jurf receive a reduced clinical load.

Later Dr. Al-Jurf and the administration developed a "resident remediation plan" in an attempt to resolve the problems and on July 29, 2002 the department heads and Dr. Al-Jurf signed the remediation plan agreement. In brief, Petitioner characterizes this remediation plan as a successful attempt by doctors Howe and Scott-Conner to increase their operative cases at the expense of Dr. Al-Jurf after their attempts to bar him through mental diagnosis at the Chicago institute failed. Dr. Al-Jurf's patient load decreased from 480 to 397 from the 2001-2002 year to the 2002-2003 year. During the same period, Dr. Howe's operative load increased from 246 to 346 and Dr. Scott-Conner's from 80 to 177. (Revised Agency Record p. 142: Petitioner's brief).

An incident between Dr. Al-Jurf and Dr. Beth Ballinger was an important event in the disciplinary proceedings. On January 22, 2003 Dr. Al-Jurf and Dr. Ballinger were discussing patient care in an ICU area observable to patients. A number of residents and students were also in the area. Dr. Ballinger, a critical care physician, was caring for a patient on Haldol; Dr. Al-Jurf had performed surgery on the patient a few days earlier. Dr. Al-Jurf wanted her to remove all

medications and start an alcohol IV. There was some conflict about proper treatment because the patient had a history of alcoholism. Beth Ballinger described the situation as follows:

> *"He rudely and sarcastically stated that incorrect management of the parties occurred for the last 2-3 days; this is incorrect in my judgment. In consideration of his concerns as the primary physician, I attempted to respond professionally, although this was difficult as I was frequently cut off mid-sentence. I disagreed with his interpretation of the patient events and was professionally concerned by his statements. However, to avoid further escalation, I then simply listened respectfully and attentively. During this exchange Dr. Al-Jurf grabbed me by the forearms, upper arms, and by each shoulder very firmly while emphasizing his dissatisfaction about the patient's care. His close proximity, physical contact, and verbal abusiveness were unacceptable and inappropriate."* (Memo to Dr. Steven Hata by Beth Ballinger)

This incident was witnessed by Jonathan S. Simmons, a Critical Care Fellow.

> *"During rounds today, I witnessed Dr. Al-Jurf act inappropriately and unprofessionally toward our critical care staff Dr. Beth Ballinger. Dr. Al-Jurf was upset about care rendered to his patient in the unit. The care was initiated by physicians other than Dr. Ballinger, however, Dr. Al-Jurf chose to publicly criticize Dr. Ballinger in the general*

> *public of the ICU for all staff, patients, and visitors to witness. I feel this was completely unprofessional and inappropriate. Furthermore, Dr. Al-Jurf grabbed Dr. Ballinger numerous times by the wrist, elbow, and shoulder in an aggressive manner. Dr. Al-Jurf was within inches of Dr. Ballinger's face which was also inappropriate. This action made me and my fellow residents and students uncomfortable. Dr. Ballinger did her best to explain the care of the patient and acted completely professional during this incident."* (Letter from Jonathan Simmons to Dr. Steven Hata.)

It was also witnessed by Katherine Davidson, an anesthesia resident.

> *"Dr. Al-Jurf came up, took BB by elbow, speaking about his anger with the management of patient. Knew he was angry, had been told night before on rounds that he was upset about management. He was holding her (BB's) arm, standing at 25 deg angle, both looking in at pt. fairly close. His hand gripped around her forearm, 3-5 minute discussion. Holding her longer than was comfortable. BB trying to be accommodating, explaining why care had been done, not visibly upset. Only noticed how close he was hand on arm. Don't seem yelling or swearing."* (U108: Interview with staff, page 41).

A student, Mathew Lux, admitted that he did not remember the specifics well, but described the situation as follows:

"On the morning of January 22, shortly after making rounds, Dr. Al-Jurf approached Dr. Ballinger regarding a patient he had in the SICU. From what I remember, the patient had a relatively common procedure done with a resultant complication. Dr. Al-Jurf walked over to Dr. Ballinger, grabbed her by her arm and started to pull her about five feet in another direction while saying something to the effect that he would like to discuss one of his patients with her. The area to which he pulled/led her by her arm was if anything into an area more surrounded by colleagues, residents, and Medical students. Although Dr. Ballinger shrugged her arm in what I took to be a sign to be let go, he continued to hold her by the arm. He then at great length attempted to tell her loudly at times, other times in a near whisper of failed attempted privacy, how he disagreed with the intensive care management of his patient. It was not really an argument, because Dr. Ballinger showed restraint and did not argue with him, but briefly stated that she was following the standard of care, then allowed Dr. Al-Jurf to berate her for several more minutes. After a while, he released her arm, only to place a restraining arm on her shoulder, even though he was making no effort to leave. I remember thinking during the incident that his criticism of the care was being conducted in an unprofessional and inappropriate location and manner. I distinctly remember that I would not myself have tolerated being grabbed in such a manner. After a few minutes,

> *Al-Jurf let go and went to talk with the nurse. When he talked with the nurse, I also saw him put a hand on her shoulder, but not in a restraining manner as had been done with Dr. Ballinger. Judging from the nurse's facial expression it is my opinion that she also did not appreciate this contact or manner of behavior."* (U108: Mathew Lux's April 8 email to Jan Waterhouse.)

However, Scott Sattovia, a resident, stated that he didn't think much of it as a time. He felt that the incident was not "in your face," and that the tone of voice was not out of place. (U108: Interview with Scott Sattovia.) Four days later, on January 26, Dr. Al-Jurf sent an email with the subject line "my apologies" stating that he had no intention of criticizing her management of the patient or touching her arm in anger.

A complaint was filed, and the Surgical Panel of the Credential Subcommittee met to determine a response. Their recommendation was that Dr. Al-Jurf be suspended for a minimum of 29 days and attend an anger management class. It appears this number was chosen to avoid the mandatory reporting for a suspension of any doctor for 30 days or more to a national committee. The Professional Practices Subcommittee and Chair Hearing Committee met to review this recommendation. It supported the panel's findings that Dr. Al-Jurf had been verbally abusive of Dr. Beth Ballinger. However, it suggested an alternative to suspension, including a remediation plan,

therapy, and ongoing monitoring. This suggestion was rejected by the Panel, which voted unanimously to affirm its original plan. On June 4, 2003 the Panel suspended Dr. Al-Jurf for 29 days, ordered him to complete an anger management course, and reduced his clinical load.

The next event considered in the proceedings below involved Dr. Yi-Horng Lee. On February 16, 2003 Dr. Lee wrote a letter to Dr. Patrick Kealy [sic] raising concerns regarding Dr. Al-Jurf's placement of a port and his behavior during an operation. He stated that no negative outcome to the patient resulted from Dr. Al-Jurf's actions. (U050: Exhibit A). Sally Rodgers and G. Patrick Kealey of the department of surgery investigated Dr. Lee's report that Dr. Al-Jurf was not treating him with respect and not listening to his recommendations. Although they did not tell Dr. Al-Jurf who leveled the accusations, Dr. Al-Jurf deduced it was Dr. Lee and ordered Dr. Lee to his office on February 20. Dr. Lee states that on this occasion Dr. Al-Jurf asked if he had written the letter, and asked him to write another letter stating that it was an isolated incident. When Dr. Lee refused, Dr. Al-Jurf stated that he was sorry that he had trained Dr. Lee and been good to him in the operating room. He also stated that he was going to reduce the amount of procedures available to residents, and that Dr. Lee was going to be in trouble and would have to answer to the Dean of the medical school. (U055: Dr. Lee's Letter to Dr. Kealey. Revised Agency Record 2 Page 528: Interview with Dr. Yi-Horng Lee) Rodgers

and Kealey considered the questions posed to Lee "intimidating and threatening." (Exhibit A: U005)

Another event considered during the proceedings below involved another incident involving anesthesia. On April 23, 2003 Lynn Fitzpatrick, the Staff Nurse Anesthetist, was working with Dr. Al-Jurf on the operative care of a patient when the two had a disagreement over the administering of the drug Lasix IV. Dr. Al-Jurf wanted to administer the dosage while Mrs. Fitzpatrick felt it would be harmful. The two reportedly had an argument and Mrs. Fitzpatrick left the room. Afterwards she told Dr. David Brown that Dr. Al-Jurf's attitude was antagonistic, hostile, and humiliating. (U002: Letter from Lynn Fitzpatrick to David Brown) There is some question as to what Dr. Al-Jurf's demeanor was at this time. Although the letter from Tanya Oyos claims that Dr. Al-Jurf began to "yell, verbally berate (Fitzpatrick) and denigrate her credibility, competence, and abilities," Mrs. Fitzpatrick states that Dr. Al-Jurf did not verbally berate her. Instead, Fitzpatrick claims that he refused to listen to her or acknowledge her in any way. (Revised Agency Record 2 Page 543: Letter from Tanya Oyos to David Brown, Revised Agency Record 2 Page 509: Summary of Interview with Lynn Fitzpatrick) Subsequently Dr. Brown told Dr. Scott-Conner that Dr. Al-Jurf's negative professional interactions were adversely affecting physicians and nurses. (U003: Letter from David Brown to Carol Scott-Conner) Dr. Tanya Oyos stated that Mrs. Fitzpatrick is normally a very

competent and composed CRNA and that she has responded to difficult decisions before without an emotional reaction. Dr. Oyos reported a list of staff anesthesiologists and nurses with complaints about Dr. Al-Jurf and who do not wish to work with him, and Dr. Oyos stated that she has great concern that members of the anesthesia team are faced with working in a hostile work environment created by Dr. Al-Jurf (U005: summary of interview with Dr. Tanya Oyos, Revised Agency Record 2 Page 544: Letter from Tanya Oyos to David Brown.)

Following this incident, Dr. Scott-Connor reported her concerns and filed a disciplinary complaint. On June 13, 2003, Provost Jon Whitmore issued a notice of charges alleging that Dr. Al-Jurf had violated the University's Professional Ethics and Academic Responsibility policy, Part III, section 29.7 of the University Operations Manual. The charges were a violation of 15.2 "Responsibilities to Colleagues," 15.2 "Responsibilities to Students," "Sexual Harassment," "Policy on Violence," and "Anti-Retaliation Policy." A mediator was appointed but failed to reach a settlement. At that point the presiding officer of the Faculty Judicial Commission, Professor Susan C. Lawrence appointed a faculty judicial panel. The faculty panel held a hearing extending over several days in April of 2004.

On July 24, 2004 the faculty panel submitted its report, finding that Dr. Al-Jurf had not committed any violation of the sexual harassment, violence, and anti-retaliation policy. They also found insufficient

evidence of excluding residents from surgery. However, the panel found that Dr. Al-Jurf was in violation of the University's Standards of Behavior in hostility towards staff members and residents. Regarding the incidents with the anesthetists, the committee held that the evidence clearly and convincingly showed an early pattern of repeated behavior and was in contravention of UOM 15.4. Regarding the incidents at the Clinical Cancer Center and with nurse Hostetler, the Committee held that the evidence clearly and convincingly demonstrated unprofessional behavior in contravention of UOPM 15.4. As to the Ballinger incident, the Committee held that there was clear and convincing evidence of vilification. The Committee's decision regarding the Fitzpatrick incident was that by clear and convincing evidence, Dr. Al-Jurf caused distress to a colleague and failed to give due respect to the rights of others to perform their work under UOM 15.4. As to the resident problems, the panel found clear and convincing evidence that Dr. Al-Jurf created a hostile educational environment and was a poor example to students. Finally, the panel considered the Yi-Horng Lee incident and held that there was no evidence of actual retaliation, but that Dr. Al-Jurf had violated UOM 15.2 by creating a hostile educational environment.

When considering the question of remedy, the panel regarded the fact that Dr. Al-Jurf was considered to be a good surgeon and technically skilled, that none of the violations were of enormous severity, that none of the incidents was close to the usual meaning

of "violence," that he had good relations with others, and that there was a lack of systematic review. Against that they measured the doubts of students and colleagues to his contributions, bad relations and awkwardness should he return, long notice and warning of unprofessional conduct without rehabilitation, the testimony of the witnesses, and the likelihood of change. The panel recommended that he not be allowed to return to operating at UIHC or maintain his position in the department of surgery.

Dr. Al-Jurf then appealed the matter to David Skorton, president of the University of Iowa. After review of the material, the president accepted the panel's findings and accepted the recommendations. He decided that Dr. Al-Jurf should be terminated, finding that if Dr. Al-Jurf was retained after a lesser sanction it would subject his colleagues and students to similar continuing behavior. (Revised Agency Record I Page 59: Decision of the President of the University of Iowa) Dr. Al-Jurf then appealed to the Board of Regents on September 15, 2005. After a cursory review the appeal was denied. Dr Al-Jurf then filed a Petition for Judicial Review with this Court on October 14, 2005.

STANDARD OF REVIEW

On judicial review of an agency action, the district court functions in an appellate capacity. *Iowa Planners Network v. Iowa State Commerce Comm'n,* 373 N.W.2d 106, 108 (Iowa 1985). Judicial review of a

final agency action is governed by application of standards set out in Iowa Code § 17A.19 (2003). The Court will inquire whether the petitioner's rights have been prejudiced by an agency decision that is unreasonable, arbitrary or capricious, or which lacks substantial evidentiary support in the record. *Id.* Thus the Court may reverse, modify, or grant other appropriate relief only if the agency's action is affected by error of law, is unsupported by substantial evidence in the record, or is characterized by an abuse of discretion. *Burns v. Bd. Of Nursing,* 495 N.W.2d 698, 699 (Iowa 1993).

The district court's review is limited to corrections of errors of law and is not *de novo. Second Injury Fund v. Klebs*, 539 N.W.2d 178, 180 (Iowa 1995); *Harlan v. Iowa Div. Of Job Serv.*, 350 N.W.2d 192, 193 (Iowa 1984). An agency's factual findings must stand if supported by substantial evidence when the record is viewed as a whole. *Sierra v. Employment Appeal Bd.*, 508 N.W.2d 719, 720 (Iowa 1993). Evidence is substantial if a reasonable person could accept it as adequate to reach the same findings. *Munson v. Iowa Dep't of Transp.,* 513 N.W.2d 722, 723 (Iowa 1994); *Suluki v. Employment Appeal Bd.,* 503 N.W.2d 402, 404 (Iowa 1993). The standard of review the board of regents holds for a termination under University rules is "clear and convincing" evidence. Therefore the Court examines the record to determine if there is substantial evidence to justify the board's "clear and convincing" standard of evidentiary findings justifying termination.

Where the evidence is in conflict or where reasonable minds might disagree about the conclusion to be drawn from the evidence, the Court must give appropriate deference to the agency's findings. *Aluminum Co. v. Employment Appeal Bd.*, 449 N.W.2d 391, 394 (Iowa 1989). The ultimate question is not whether the evidence supports a different finding, but whether the evidence supports the findings actually made. *Munson v. Iowa Dep't of Transp.*, 513 N.W.2d at 723.

DISCUSSION

The petitioner is asking the Court to overturn the termination of Dr. Al-Jurf and to return him to his previous status as a surgeon with the department with full benefits. The request stems from Iowa Code §17A.19.

"The court may affirm the agency action or remand to the agency for further proceedings. The court shall reverse, modify, or grant other appropriate relief from agency action, equitable or legal and including declaratory relief, if it determines that substantial rights of the person seeking judicial relief have been prejudiced because the agency action is any of the following:

> f. Based upon a determination of fact clearly vested by a provision of law in the discretion of the agency that is not supported by substantial evidence in the record before the court when that record is viewed as a

whole. For purposes of this paragraph, the following terms have the following meanings:

(1) "Substantial evidence" means the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance.

(2) "Record before the court" means the agency record for judicial review, as defined by this chapter, supplemented by any additional evidence received by the court under the provisions of this chapter.

(3) "When that record is viewed as a whole" means that the adequacy of the evidence in the record before the court to support a particular finding of fact must be judged in light of all the relevant evidence in the record cited by any party that detracts from that finding as well as all of the relevant evidence in the record cited by any party that supports it, including any determinations of veracity by the presiding officer who personally observed the demeanor of the witnesses and the agency's explanation of why the relevant evidence in the record supports its material findings of fact.

g. Action other than a rule that is inconsistent with a rule of the agency.

> h. Action other than a rule that is inconsistent with the agency's prior practice or precedents, unless the agency has justified that inconsistency by stating credible reasons sufficient to indicate a fair and rational basis for the inconsistency.
>
> i. The product of reasoning that is so illogical as to render it wholly irrational.
>
> j. The product of a decision-making process in which the agency did not consider a relevant and important matter relating to the propriety or desirability of the action in question that a rational decision maker in similar circumstances would have considered prior to taking that action.

Iowa Code § 17A.19

The Court will consider each of the petitioner's contentions separately.

1. Substantial Evidence

"Substantial evidence" means the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance. Iowa Code § 17A.19(f)

"Evidence is substantial, for purposes of appellate review of law action tried to the district court, if a reasonable mind could accept it as adequate to

reach the same findings." *Dow City Cemetery Ass'n v. Defiance State Bank* 596 N.W.2d 77 (Iowa 1999) "A finding by the agency shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs. We have said that evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion." *Glowacki v. State Bd. of Medical Examiners* 516 N.W.2d 881 at 884 (Iowa 1994). The Board's own standard of evidence under their own rules is "clear and convincing." The Court now reviews the record to determine if a reasonable mind could make the same factual findings as the review board.

There are eleven primary incidents in the record used for support of the six charges considered by the committee. These consist of the 1996 resident survey, the March 20, 2000 incident during surgical prep, the August 14, 2000 complaint by Resident Sheela Thinakaran the October 20, 2000 complaint by Dr. Fred Mensink, the October 30, 2000 complaint by John Aker, the August 31, 2001 resident petition against Dr. Al-Jurf, the May 23, 2002, and June 5, 2002 incidents with Michelle Hostetler, the complaints by Dr. Howe that Dr. Al-Jurf was disrupting the clinic by unnecessarily requesting residents, the January 22, 2003 incident with Dr. Beth Ballinger, the February 16, 2003 discussion with Dr. Yi-Horng Lee, and the April 23, 2003 incident with Lynn Fitzpatrick.

There is no question as to the existence of these incidents. Many of the incidents were witnessed by persons other than the complainants. Dr. Al-Jurf's actions were described as "unprofessional" or "aggressive" by medically experienced witnesses, again other than the complainants. Aside from the claim that Dr. Scott-Conner was seeking to take over Dr. Al-Jurf's caseload or the implication that residents naturally feel aggression towards a superior, no bias on the part of the witnesses or victims is alleged. Instead, petitioner disagrees as to the nature and severity of the incidents and characterizes the proceedings as an attack on a competent surgeon orchestrated by department members who pushed what would otherwise be unremarkable incidents. He argues that given the nature of the incidents, no reasonable person could find that they met a "clear and convincing" support for termination.

The duty of this Court is not decide whether the evidence would support a finding contrary to that reached by the agency. Its duty is to examine the entire record to determine if substantial evidence exists to support the "clear and convincing" finding made by the agency. If substantial evidentiary support exists, then it does not matter whether some of the evidence would support a contrary finding. *Acuity Ins. v. Foreman* 684 N.W.2d 212, 219-220 (Iowa 2004). "The court must 'broadly and liberally' apply the agency findings in order to uphold, rather than defeat, the agency's decision." *Stephenson v. Furnas*

Elec. Co. 522 N.W.2d 828 at 831 (Iowa 1994) Considering the multiple reports of different staff, nurses, anesthesiologists, and fellow doctors shown in the record, considering their unwavering tone regarding Dr. Al-Jurf's behavior, and considering the incidents range over a time period of seven years, this Court concludes that a reasonable person could have found that clear and convincing evidence exists supporting termination.

2. Inconsistent with Agency Rule

"Action other than a rule that is inconsistent with a rule of the agency." Iowa Code § 17A.19(g)

The University Operations Manual is the guiding document for the behavior of department health care providers and governs their employment and was the foundation for the board's decision. While the proceedings were governed by UOM 29.7, the panel ultimately based its decision on two substantive areas of the operations manual.

UOM §15.4 Responsibilities to Colleagues

"As a colleague, the faculty member has obligations that derive from common membership in the community of scholars. He or she respects and defends the free inquiry of associates and avoids interference with their work. In the exchange of criticism and idea, he or she shows due respect for the rights of others to their opinions. He or she refrains from

personal vilification, and acknowledges contributions of others to his or her work. When asked to evaluate the professional performance of a colleague, the faculty member strives to be objective." – University Operations Manual 15.4.

UOM § 15.2 Responsibilities to Students

"A faculty member has a responsibility to create a climate that encourages the student's endeavors to learn and should conduct himself or herself at all times so as to demonstrate respect for the student and fair and impartial evaluations of the student's work." University Operations Manual 15.2

The petitioner argues that the original basis of the charges was sexual harassment and violence. He contends that by withdrawing those charges he was given inadequate notice and therefore the termination should be reversed. Upon review and consideration of the record, the Court concludes that there is no evidence that the petitioner was "blindsided" by charges not related to sexual harassment or violence. On June 13, 2003 a notice of charges was sent to Dr. Al-Jurf (Revised Agency Record 1 Page 90: Letter-from Provost) This notice included both sections of the UOM listed above and clearly stated that both sections were alleged to be violated. The notice also listed the various incidents from 1996 to 2003 as the basis for the charges. Therefore the inclusion of these charges before the final commission, though not related to sexual harassment, was not inconsistent

with agency policy. The sufficient notice of charges also negates the due process implication of the petitioner's argument. The petitioner had ample notice that the sexual harassment charge would be only one of many charges, and the withdrawal of that single charge after consideration of the evidence does not negate the proceedings as a whole.

3. Inconsistent with Prior Practice without Credible Reason

"Action other than a rule that is inconsistent with the agency's prior practice or precedents, unless the agency has justified that inconsistency by stating credible reasons sufficient to indicate a fair and rational basis for the inconsistency." Iowa Code § 17A.19(h)

The petitioner argues that after the Ballinger incident, the panel did not follow the lesser recommendation of the hearing board but rather went through on its original decision to suspend Dr. Al-Jurf for 29 days. He characterizes this as "of major concern." The Court, however, does not share that concern. The finding of the hearing board is entitled as a "suggestion" by the board itself. There is nothing in the record to indicate that the hearing board's decision was procedurally binding on the surgical board. Therefore the failure of the surgical board to follow the hearing board's recommendation is not an action inconsistent with prior practice warranting reversal. This is particularly true considering that the surgical

board's decision dealt only with the suspension of Dr. Al-Jurf, while it is his termination that is currently under consideration.

The petitioner also argues that because Dr. Al-Jurf was disciplined for the Ballinger evidence, the later termination was a "second or third bite of the apple." Petitioner argues that the later panel, termination is invalid pursuant due to res judicata binding by the earlier panel decision. The standard of res judicata is a theory of legal precedent that can also apply to administrative decisions. *Polk County Secondary Roads v. Iowa Civil Rights Com'n* 468 N.W.2d 811 (Iowa 1991) However, its application is not valid here. The termination decision considered the events of Dr. Al-Jurf's tenure in the department in its entirety, and considered the Ballinger incident only as part of that larger overall history. Legal courts in practice do this on a regular basis with multiple offender sentencing rules. It would be contrary to both reason and practice that once disciplined for an event, that event can no longer be considered as part of the overall record.

Petitioner also argues that the department failed to comply with the July 29, 2002 remediation plan, and that this inconsistency warrants reversal. He notes that he was never required to attend anger management classes as suggested by the Rush Institute and required by the panel, nor was his clinical caseload decreased as recommended by the remediation plan. Petitioner thus concludes that instead of his position being terminated, he should be allowed

back but required to turn more cases over to his residents and/or to attend anger management classes. However, petitioner did state that his patient load decreased from 480 to 397 from the 2001-2002 year to the 2002-2003 year. (Revised Agency Record p. 142: Petitioner's brief). Therefore petitioner's claim that the remediation plan was not complied with is actually not supported by his own assertions. Regarding the lack of anger management training, the Rush Institute analysis was a suggestion by an independent organization and not a binding agency rule. Thus the Court does not agree that the failure to comply with the Rush evaluation was a failure of the department that merits reversal or remand on the eventual decision to terminate. The Court notes that nothing prohibited Dr. Al-Jurf from obtaining the anger management training that was suggested, other than his own perception that it was not needed.

The surgical panel after the Ballinger incident also failed to enforce anger management classes for Dr. Al-Jurf. However, the surgical panel issued its final decision on June 4, 2003. The notice of charges that led to eventual termination was initiated by the provost on June 13, 2003 and included two incidents not considered by the surgical panel: the incidents with Dr. Yi-Horng Lee and Lynn Fitzpatrick. There is nothing in the series of events which occurred that leads to the conclusion that the failure of the surgical panel to mandate anger management classes precludes the eventual decision to terminate Dr. Al-Jurf

for the series of events which culminated in his termination.

4. Irrational Reasoning

In order to prevail on this theory, petitioner must establish that the decision is "[t]he product of reasoning that is so illogical as to render it wholly irrational." Iowa Code § 17A.19(i)

Dr. Al-Jurf makes a persuasive case that he has been an operating physician for a long period of time without a disciplinary complaint. Even his detractors show respect for his medical abilities and knowledge. Thus he characterizes the current problems not as his own, but rather as the result of efforts by Dr. Scott Conner to steal his professional workload. It is true that the record indicates that from 2002 to 2003 the number of Dr. Al-Jurf's surgical procedures decreased while Dr. Scott-Conner's workload increased. However, the actual existence of the incidents stand as undisputed. They were noted in the reports of several residents and anesthesiologists, and confirmed by witness accounts of nurses and other doctors. The fact that Dr. Al-Jurf's actions – on more than one occasion – involved physical contact, or a raised voice, or took place within the sight and hearing of patients and visitors, or was described by fellow health care providers as unprofessional, means that this Court cannot agree with the petitioner's implication that these were "minor" incidents unworthy of disciplinary notice. Nor can this Court agree that the current

proceedings are the result of a conspiracy against Dr. Al-Jurf.

Throughout these proceedings, Dr. Al-Jurf has stressed that there have been no complaints regarding his care of patients. It is true that the numerous complaints which have led to petitioner's termination arose from his relationships with colleagues, staff members and residents rather than patients. Dr. Al-Jurf has consistently minimized the nature of the problems, the cause of the problems and his responsibility for them. Nevertheless, the problems have been well documented below and there is substantial evidence to support the findings below by clear and convincing evidence. The remaining question is whether the problems found by the panel, Dr. Skorton and the Board of Regents justify termination.

It is apparent from the record that the various levels of agency action which preceded this judicial review proceeding all recognized the importance of a physician in a teaching hospital, such as the one at the University of Iowa, doing more than providing good patient care. A good working relationship with colleagues, staff members and residents is critical to such an institution being successful. Without a positive work and education environment, the hospital will be unable to attract and retain top faculty members and top residents. Conflicts such as those generated by Dr. Al-Jurf, as found by the agency here, create disruption among the operation of the medical care providers; the potential for harm is even greater when, as here, as here, [sic] at least one of the conflicts

took place in a patient care area. It is without question that the University can make termination decisions based on the skill level and professional ability of a staff member. It is also essential, however, that the University be able to make decisions based on the personal conduct of that employee when it impacts directly on the functions of the hospital both in providing patient care and teaching residents.

Medical skill does not exist in a vacuum and cannot serve as the sole criteria for tenure on the faculty of a University hospital. It is critical for administrators to also seek to encourage a safe and respectful work environment. In the current case, the administration concluded that the verbal hostility of Dr. Al-Jurf towards residents and staff crossed the threshold it could tolerate. As President Skorton explained in his thoughtful and well-reasoned decision, the university setting is a setting where surgeons are expected to be more than technically skilled. They are expected to be a teacher, to foster an educational environment for his students, to be part of team that gives due respect to others. While Dr. Al-Jurf is by any account an unquestionably skilled surgeon, the UIHC setting necessitated an additional requirement for its surgeons, a requirement of personality and attitude that Dr. Al-Jurf appears either unqualified or unwilling to meet. The Court cannot conclude that the University's requirements are irrational.

5. Failure to Consider a Relevant and Important Matter

"The product of a decision-making process in which the agency did not consider a relevant and important matter relating to the propriety or desirability of the action in question that a rational decision maker in similar circumstances would have considered prior to taking that action." Iowa Code § 17A.19(j)

The only resident evaluation in the record is that from 1996. Petitioner alleges that there should be resident evaluations of Dr. Al-Jurf for additional years eighteen (18) in total. (Revised Agency Record Page 1633: Resident Evaluations 1992-2003) The petitioner's summary of these evaluations indicates positive remarks by residents. From this he argues that the panel committed reversible error by failing to consider the resident evaluations in their entirety. It is true that the petitioner's summary of these evaluations are listed among the exhibits submitted at the university hearing, yet the panel stated that the record contained only one set of written assessments. (Revised Agency Record 1 Page 78: Faculty Judicial Panel Report) However, the petitioner does not make any specific claim as to what their probative value might have been or how it might have swayed the panel had the additional resident assessments been entered. The petitioner's summary of the yearly evaluation that does exist in the record – 1996 – clearly accentuates and quotes at length the positive remarks while minimizing lengthy pages of negative

remarks to a single line – "negative remark." Even if the Court assumes the probative value of these reports most favorably to the petitioner, it would theoretically have only affected one charge without having relevance to the other five charges used to support termination. The findings of the panel under charge five also rely on facts unrelated to the evaluation, including the resident petition, various documents, and witness testimony. As the president said in his decision, it was not the 1996 evaluation but rather the 2001 petition that brought the issue to the forefront.

Finally, even without these missing evaluations, the panel ultimately found there was insufficient evidence of excluding residents from surgery. The president agreed in his decision and therefore that allegation was never used as a basis for termination. Thus the failure to include these resident evaluations is a moot point. "The burden of demonstrating the required prejudice and the invalidity of agency action is on the party asserting invalidity." Iowa Code § 17A.19 The Court holds that the record does not support a showing that these resident evaluations were relevant and important matters for which failure to consider warrants reversal or remand.

CONCLUSION

The Court concludes that the findings of fact by clear and convincing evidence by the agency are supported by substantial evidence. The Court also

finds no errors of law committed by the agency. The decision to terminate Dr. Al-Jurf was not irrational, arbitrary or capricious given the findings of fact.

IT IS THEREFORE ORDERED that the Iowa Board of Regent's decision is hereby **AFFIRMED**.

IT IS SO ORDERED this 7th day of September 2006.

/s/ Robert A. Hutchison
ROBERT A. HUTCHISON, JUDGE
Fifth Judicial District of Iowa

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IN THE SUPREME COURT OF IOWA

No. 06-1621

Polk County No. CV5882

ORDER

(Filed Sept. 10, 2007)

DR. ADEL AL-JURF,
Petitioner-Appellant,

vs.

BOARD OF REGENTS,
STATE OF IOWA,
Respondent-Appellee,

UNIVERSITY OF IOWA,
Interested Party

After consideration by this court, Appel, J., not participating further review of the above captioned case is denied.

Dated this 10th day of September, 2007

THE SUPREME COURT OF IOWA

By /s/ Marsha K. Ternus
Marsha K. Ternus,
Chief Justice

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THE [LOGO]
UNIVERSITY
OF IOWA

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In the Matter of the
Notice of Charges of
Violations of the Policy on
Ethics and Academic
Responsibility by
Professor Adel Al-Jurf
Department of Surgery
Carver College of Medicine
The University of Iowa

Decision of the President of
The University of Iowa
January 20, 2005

Background

On June 13, 2003, Provost Jon Whitmore ("Academic Officer") issued a Notice of Charges alleging that Professor Adel Al-Jurf had violated the University's Professional Ethics and Academic Responsibility policy, Part III, ch. 15 of the University Operations Manual (UOM). A mediator was appointed pursuant to the procedures for the resolution of ethics complaints against faculty members set out in Part III, section 29.7 of the UOM. When mediation failed to produce a settlement, Professor Susan C. Lawrence, the presiding officer of the Faculty Judicial Commission, appointed a faculty judicial panel in accordance with the provisions of section 29.7(f). The faculty panel, consisting of Professor Clark M. Stanford (Chair), Professor R. David Arkush, and Professor

Stewart W. Ehly, held a hearing extending over several days in April, 2004.

On July 24, 2004, the faculty panel submitted its report pursuant to section 29.7i, and that report was sent to the parties by Professor, Lawrence on July 29, 2004. The Panel found that Professor Al-Jurf had committed several ethics violations. The Panel recommended that Dr. Al-Jurf "not be allowed to return to operating at the UIHC or to maintain his position in the Department of Surgery." The Panel stated: "We intend by this recommendation to include the possibility of dismissal, allowing him to resign, or transfer to another position that would not be associated with the UIHC."

The Panel also heard grievances brought by Dr. Al-Jurf against the University through the actions of various administrators. The panel's hearing on Dr. Al-Jurf's grievances was consolidated with the hearing on the ethics charges. The faculty dispute procedures for grievances of this type do not provide for review of a panel decision by the President in the event that the panel has not found in favor of the faculty member. See section 29.6(g)(4). The panel found against the faculty member as to each of his grievances, and thus I will not review that decision. I will, however, address the grievances insofar as they relate to the ethics charges.

Review by the President

Based on the UOM, Part III, section 29.7j, the President determines "what actions, if any, the University shall take, based on the Panel's findings and recommendations." The review by the President is based on the documents and testimony presented to the panel. The University bears "the burden of proving, by clear and convincing evidence in the record as a whole, that the faculty member violated the Professional Ethics and Academic Responsibility Policy or other University Policy as stated in the Notice of Charges." The President is to "give great weight to the findings and recommendations of the panel."

The record in this case consists of the Panel's 20 page report, the videotapes of the hearing held in this matter (including the deposition of Dr. Lee taken in Pittsburgh), and numerous exhibits presented both by the Provost and the faculty member. I have considered those written arguments filed by the parties in connection with the hearing and the written arguments filed by Dr. Al-Jurf on or before August 30, 2004, the deadline that I set for the submission of briefs following the distribution of the Panel report.

Based on an extensive review of the material, I accept all of the Panel's findings, with minor variations, and accept the recommendations. I will briefly explain my decision.

The Charges Before the Panel

The Notice of Charges alleged violations of two provisions of the "Professional Ethics and Academic Responsibility" policy set out at chapter 15 of Part III, UOM. One set of charges is based on Section 15.4, entitled "Responsibilities to Colleagues." That section indicates:

> As a colleague, the faculty member has obligations that derive from common membership in the community of scholars. He or she respects and defends the free inquiry of associates and avoids interference with their work. In the exchange of criticism and ideas, he or she shows due respect for the rights of others to their opinions. He or she refrains from personal vilification, and acknowledges contributions of others to his or her work. When asked to evaluate the professional performance of a colleague, the faculty member strives to be objective.

The Notice of Charges alleged that on several occasions Dr. Al-Jurf had "subjected colleagues to personal vilification and verbal abuse in a manner that creates an unacceptable work environment for them."

The Notice set forth four separate factual bases for this claim. The Notice alleged that: 1) Dr. Al-Jurf had subjected Lynn Fitzpatrick to vilification and abuse during an operating procedure on April 23, 2003; 2) On January 22, 2003, Dr. Al-Jurf had subjected Dr. Beth Ballinger to "vilification, physical assault and verbal abuse during rounds in the Surgical Intensive

Care Unit;" 3) Dr. Al-Jurf had subjected colleagues in the Clinical Cancer Center to vilification and verbal abuse in 2002; and 4) Dr. Al-Jurf had engaged in a "pattern of unprofessional behavior" in the Operating Room with members of the Department of Anesthesia from January 2000 through August 2001.

The Panel found that Dr. Al-Jurf had violated the University's standards of behavior as described in section 15.4 as alleged in each of the charges set out in the Notice.

The Notice also alleged violations of section 15.2 entitled "Responsibilities to Students." As set forth in the Notice, under section 15.2, "a faculty member has a responsibility to create a climate that encourages the student's endeavors to learn and should conduct himself or herself at all times so as to demonstrate respect for the student and fair and impartial evaluations of the student's work." (Section 29.7c requires that the Notice of Charges "quote the provisions" of the policy alleged to have been violated. While the Notice in this case does not quote directly the relevant provisions, the Notice sufficed to put the faculty member on Notice of the particular provisions alleged to have been violated. In this regard, there has not been an objection from the faculty member regarding the adequacy of the Notice of Charges.) The charge as stated derives from three separate subsections of 15.2:

> As a teacher, the faculty member has the responsibility for creating in his or her classroom or laboratory a climate that encourages

> the student's endeavors to learn. The faculty member should exemplify high scholarly standards and respect and foster the student's right to choose and pursue his or her own educational goals.
>
> * * *
>
> e. The faculty member owes to the student and the University a fair and impartial evaluation of the student's work. Such evaluation should be consistent with recognized standards and must not be influenced by irrelevancies such as religion, race, sex, or political views, or be based on the student's agreement with the teacher's opinion pertaining to matters of controversy within the discipline.
>
> * * *
>
> h. The faculty member should conduct himself or herself at all times so as to demonstrate respect for the student.

The Notice of Charges then describes two separate sets of events that form the basis for the charges. The Notice alleged that beginning in 1996, Dr. Al-Jurf had excluded residents from participation in surgical cases, and that he created "a disruptive and hostile working environment for the residents in the Operating Room, . . . " The Notice also alleged that in February 2003 he had subjected a resident, Dr. Yi-Horng Lee, to intimidating and threatening behavior in response to a letter that Dr. Lee had written to Dr.

Kealey expressing concerns about Dr. Al-Jurf's conduct in a particular case.

The Panel found insufficient evidence to support the claim that Dr. Al-Jurf had violated 15.2 by excluding residents from participating in surgery. The Panel did find, however, that he had violated 15.2 by creating "a hostile educational environment in the operating theater on multiple occasions to residents under his training." The Panel also found that Dr. Al-Jurf had violated section 15.2 in his treatment of Dr. Lee.

The Notice of Charges also refers to three other policies that can also constitute the basis for proceeding under section 29.7: the policy on sexual harassment, the policy on violence, and the anti-retaliation policy. Because of the manner in which the Notice of Charges was structured, there is some question as to whether or not the Notice of Charges set forth claims under these other policies. During the course of the proceedings before the Panel, the Provost made it clear that he was abandoning any potential claim of the sexual harassment policy. The panel report does not address separately a claim under the violence policy. There is, however, a reference to the claim in the Recommended Remedy section: "Two incidents which involved unwanted touching (Ballinger and Thinkaran) may technically count as "violence," but were not considered by the panel to be close to what that word usually means." Panel Report at p. 18. With respect to the retaliation claim, the panel found: "As to the charge of retaliation (Section UOM 11.3), we find that he threatened retaliation, but we have

seen no evidence of actual retaliation." Panel Report at p. 14.

Findings

Violations of Section 15.4

On the basis of the testimony and documents in the record, and giving great weight to the Panel's findings, I conclude that the Academic Officer has proved by clear and convincing evidence that Dr. Al-Jurf violated section 15.4 of the Professional Ethics and Academic Responsibility policy as stated in the Notice of Charges. The evidence shows that he violated the standards set out in section 15.4 on repeated occasions, in his treatment of Dr. Ballinger, Ms. Fitzpatrick and Ms. Hostetler. These events occurred against the backdrop of the earlier problems with the Department of Anesthesia, when he had been put on notice of the expectations regarding treatment of colleagues and co-workers, and the seriousness with which his failure to meet these expectations would be treated.

The Academic Officer presented evidence regarding three separate events in the year preceding Dr. Al-Jurf's suspension in May 2003, each of which represented a violation of 15.4, and taken together represent a pattern of such behavior. There are not substantial factual disputes regarding what occurred in these incidents. There is clear and convincing evidence that violations occurred as alleged by the Academic Officer.

Cancer Clinic Events

Dr. Al-Jurf violated professional standards in his treatment of Ms. Hostetler, his long-time nurse in the Cancer Clinic. Dr. Al-Jurf had objections to sharing the services of Nurse Hostetler with Dr. Howe. While Dr. Al-Jurf may have had legitimate concerns about the adequacy of nurse staffing in the clinic, it is clear that his objections were in large part motivated by his hostility toward Dr. Howe. In any event, there simply is no justification for Dr. Al-Jurf directing his frustrations and grievances, legitimate or not, toward Ms. Hostetler, particularly in the abusive manner in which he expressed himself.

As found by the Panel, Dr. Al-Jurf put "overbearing pressure" on her, demanding that she cease working for him or Dr. Howe. The record reveals that Ms. Hostetler did not want to choose between these doctors (and the patients they were treating). By all reports, she was deeply committed to the work of the clinic. Moreover, there would be an understandable reluctance to "choose" between two doctors whose relationship was so evidently strained.

In the first incident in May, 2002, Dr. Al-Jurf took Ms. Hostetler into an empty examination room and proceeded to yell at her, demanding that she make a choice. His voice was loud enough that other staff outside of the examining room could hear him. This first incident had a significant effect on Ms. Hostetler. She was reduced to tears and had to leave the clinic for the remainder of the day. Thus, there

can be no doubt that Dr. Al-Jurf's conduct predictably interfered with Ms. Hostetler's work in a way that violated section 15.4.

Dr. Al-Jurf knew that his conduct had deeply upset Ms. Hostetler. He nonetheless repeated his conduct a second time on June 5, 2002. He again insisted on a decision, again became angry and shouted, again placed Nurse Hostetler in the middle of a dispute between him and Dr. Howe.

The fact that Ms. Hostetler did not participate in these proceedings does not undercut the conclusion that the conduct violated section 15.4. There is no real dispute about what happened. There is substantial documentation of the events, and Dr. Al-Jurf has acknowledged that he had these discussions with Ms. Hostetler. There is some evidence that Ms. Hostetler viewed these as "isolated incidents" in an otherwise good and productive relationship. However, even if they were isolated events in the context of their relationship, as discussed below, they were not "isolated" in Dr. Al-Jurf's workplace behavior overall.

Dr. Ballinger Incident

Dr. Al-Jurf's treatment of Dr. Ballinger in the Surgical Intensive Care Unit violated the professional standards described in section 15.4. This incident took place in a patient care setting, with a group of approximately ten residents and medical students listening and watching. Dr. Al-Jurf spoke in a loud and sarcastic voice and disparaged the care that the

SICU staff had given a patient. Dr. Al-Jurf refused to listen to Dr. Ballinger's explanation regarding the treatment plan, and cut her off when she tried to respond to his statements. During the incident, Dr. Al-Jurf gripped Dr. Ballinger's arm on several occasions.

Dr. Al-Jurf did not recall touching her during the encounter, but all witnesses confirm that he did so. This touching was not incidental or accidental, but was a "gripping" of her arm. His abusive tirade, in the presence of numerous individuals, constituted "vilification" and interfered with Dr. Ballinger's work, all in violation of section 15.4. In the context of this verbal abuse, the touching was offensive and insulting, and significantly aggravates the verbal abuse which occurred.

Dr. Al-Jurf complains that there are inconsistencies among the various accounts of the incident that Dr. Ballinger was called upon to give in the investigation of her complaint regarding the incident. This claim of inconsistencies is not relevant to the basic elements of the charge brought by the University – that there was verbal abuse constituting vilification, and that there was unwelcome and insulting touching that took place.

Ms. Fitzpatrick Incident

Dr. Al-Jurf's treatment of Lynn Fitzpatrick on April 23, 2003 violated the professional standards set out in section 15.4. The incident grew out of a

disagreement during surgery about whether a diuretic, Lasix, should be administered. Dr. Al-Jurf "ordered" that she administer Lasix. Ms. Fitzpatrick, a licensed nurse anesthetist, disagreed with the decision. When she tried to articulate her concerns, Dr. Al-Jurf would not listen. He continued to repeat his demand for Lasix, becoming more adamant and raising his voice. By the end of the incident, Ms. Fitzpatrick was reduced to tears and did not feel able to take the next scheduled case with Dr. Al-Jurf. She told people that she would never work with Dr. Al-Jurf again.

Dr. Al-Jurf did not explicitly disparage the skill or competency of Ms. Fitzpatrick. However, his refusal to listen to her view, and his adamant insistence on the administration of the diuretic without acknowledging her point of view, expressed a complete lack of respect for her opinion. Section 15.4 does not demand that professionals reach agreement, but it does demand respect for the rights and opinions of others. Disagreement in complex situations is inevitable. The expectation is that disagreement will be resolved through a discussion consistent with the obligation to show due respect for the rights and views of others. Dr. Al-Jurf's conduct failed to meet this obligation. Dr. Al-Jurf's treatment of Ms. Fitzpatrick interfered with the performance of her work, and is the type of vilification that is prohibited under section 15.4.

Incidents with Anesthesiologists

The Academic Officer submitted documentation of a series of problems between Dr. Al-Jurf and members of the Department of Anesthesia that started in 2000 and extended into 2001. These documents present complaints that Dr. Al-Jurf had engaged in unprofessional conduct at various times in his interaction with the staff, including shouting, refusing to listen, making personally demeaning statements, and, on at least one occasion, touching an individual in an insulting manner. This documentation established that Dr. Al-Jurf had previously been put on notice that behavior of this type is unacceptable and that future similar behavior could have serious implications.

The Academic Officer did not seek findings from the Panel as to these specific incidents: "These incidents are not specifically identified in the Notice of Charges and the University has not asked the Panel to make specific findings of violations concerning these incidents. However, these incidents date the beginning of a pattern and the provision of notice to Dr. Al-Jurf that certain of his behavior was considered unacceptable." Post-Hearing Brief, p. 2. The panel did not rule on these incidents individually, but found that together they formed an early pattern of behavior. These incidents cannot form an independent basis for discipline in this case. However, as the Panel found, "Dr. Al-Jurf had been put on notice about the seriousness of his behavior in 2000."

Violations of Section 15.2

On the basis of my review and of the Panel's findings, I conclude that the Academic Officer has proved by clear and convincing evidence that Dr. Al-Jurf violated section 15.2 of the Professional Ethics and Academic Responsibility policy. Section 15.2 requires that the faculty member, as a teacher, "conduct himself or herself at all times so as to demonstrate respect for the students." The faculty member is called upon to create "a climate that encourages the student's endeavors to learn" and to "provide a fair and impartial evaluation of the student's work." The evidence establishes that Dr. Al-Jurf has not met these obligations.

While there is reportedly evidence of problems with Dr. Al-Jurf's teaching going back to 1996, the 2001 petition from residents regarding Dr. Al-Jurf brought the issue to the forefront. The petition outlined various complaints, including allegations that Dr. Al-Jurf had excluded students from surgical cases, that he had made derogatory comments to residents in the Operating Room, and that he had favored certain students over others in assignments. By all accounts, a petition from residents of this nature was unprecedented within the Department.

The concerns that were raised by the residents' petition were investigated by a committee of four faculty colleagues, including Dr. John Sharp, the director of the residency program. The committee interviewed the majority of the approximately 40

residents in the program. The report of their investigation, University exhibit 45, portrays conduct by Dr. Al-Jurf that is fundamentally inconsistent with a faculty member's obligations under 15.2. The committee reported a "general consensus of the resident staff that they feel belittled due to his behavior." The committee reported resident complaints that "he frequently yells at them, insults their technical capabilities (they cite comments such as – 'haven't you ever done anything with your hands, even bagged groceries?')" The residents reported that there was not an educational environment, citing comments from Dr. Al-Jurf such as "don't question me" and "I'm not here for resident training." The perception among residents was that Dr. Al-Jurf was "playing favorites" among the residents. Dr. Al-Jurf did not conduct himself in a manner that demonstrated respect for his students. He created an intimidating climate that impaired learning.

The Panel found, and I agree, that the University did not establish its claim that Dr. Al-Jurf had continued to exclude residents from active participation in surgical cases. The remediation plan that was established in July 2002 set numerical expectations in this regard, and there is insufficient evidence to conclude that Dr. Al-Jurf failed to meet these expectations. However, while many of the residents' complaints focused on this issue, it is clear that the residents were concerned not only about the substance of their experience, but also the educational environment.

I do have concerns that the Department did not appear to respond promptly to the committee report. There was a significant delay between the committee report in November, 2001, and the implementation of the remediation plan in July, 2002. Likewise, I am concerned that Dr. Al-Jurf's compliance with the remediation plan may not have been monitored in a systematic fashion. I do not view these concerns, however, as central to the question of whether or not Dr. Al-Jurf met his obligations under section 15.2. Dr. Al-Jurf knew that his treatment of residents was under scrutiny, and had more than adequate notice about the University's expectations with respect to his conduct.

While there are no documented incidents of violations of the remediation plan in the six months following its implementation, Dr. Al-Jurf's conduct with respect to Dr. Lee in February, 2003 again demonstrated a lack of respect for his obligations in the educational setting. In his complaint to Dr. Kealey, Dr. Lee raised concerns about whether informed consent had been obtained and whether there was appropriate follow-up by Dr. Al-Jurf during the procedure. While Dr. Al-Jurf defends his actions on the day of the procedure as appropriate under the circumstances, the ethics charge brought by the University is based on Dr. Al-Jurf's response to the complaint and not the underlying events.

Dr. Al-Jurf responded by subjecting Dr. Lee to threats and intimidation. The very act of calling Dr. Lee into his office and asking whether he would

retract the statement was intimidating. When Dr. Lee made it clear he would not retract the statement, Dr. Al-Jurf told Dr. Lee that he would have to "answer to the Dean." The clear implication of the statement was that there would be negative consequences to Dr. Lee for having complained. Moreover, Dr. Al-Jurf's statements about what would happen to future residents was intimidating. Dr. Al-Jurf said that because of the complaint, he would limit the participation of residents in future procedures. He told Dr. Lee that his fellow residents would know that he was responsible for these restrictions – that they were suffering because of Dr. Lee. Dr. Al-Jurf finished by telling Dr. Lee that he was sorry that he had trained him.

Dr. Al-Jurf's actions violate the expectations on faculty behavior set forth in section 15.2. They demonstrated a lack of respect for Dr. Lee's views and opinions. They created a climate of fear and intimidation that undercut the endeavor to learn. These actions were fundamentally inconsistent with the role of a faculty member in the relationship to a student.

Sanctions

The Panel recommended that "Dr. Al-Jurf not be allowed to return to operating at the UIHC or to maintain his position in the Department of Surgery." In light of the numerous and on-going violations detailed above, and giving great weight to the Panel's recommendations, I accept the Panel's recommendation. I am therefore directing that the Panel's recommendation be

implemented by the dismissal of Dr. Al-Jurf from his position with the University.

The norms expressed in the Professional Ethics and Academic Responsibility policy are vital to the functioning of the University community. Both section 15.2 and section 15.4 demand that a faculty member treat other members of the community with respect. On numerous occasions, Dr. Al-Jurf has failed to meet this responsibility with respect to both students and colleagues. His actions have threatened the vitality and health of this particular health care and learning community.

While the Panel has observed that "none of the violations is of enormous severity," neither have they been of an inconsequential nature. In each instance, the acts have been deeply upsetting to the others involved, and interfered with their endeavors. My view is that each violation was of a serious nature, whether or not any one act would have itself led to a sanction of dismissal.

I agree with the Panel's observation that there is little likelihood that Dr. Al-Jurf's behavior will change. First, problems continued after he was warned that his employment was in jeopardy. Certainly by the time of the implementation of the remediation plan in 2002 he knew that conduct of an unprofessional nature could lead to his dismissal. Nonetheless, his unprofessional behavior continued, culminating in the three incidents occurring from January through April 2003. Second, Dr. Al-Jurf has

displayed little, if any, insight regarding the consequences of his behavior on the people working with him.

Dr. Al-Jurf is a technically skilled surgeon. However, his undertaking here, in this University community, requires more than that. He is to be a teacher, someone who fosters an educational environment for his students. He has not shown that he can do that on a consistent basis. He is also expected to be a part of a team, who gives due respect to the others, his colleagues, working on this team. He has not met this expectation.

I do not believe that lesser sanctions are appropriate in light of the gravity of the offenses taken together, and given my view that Dr. Al-Jurf has not demonstrated the capacity or willingness to change his behavior. A suspension for a period of time would mean his return to the Department. I am unwilling to adopt this sanction believing that future colleagues and students will be subjected to similar behavior. I also believe that a suspension would convey a message that I do not want to convey – that this University does not take seriously the ethical standards set out in Chapter 15.

The Panel recommendation suggests that one possibility would be a transfer to another position not associated with UIHC. Given the nature of Dr. Al-Jurf's responsibilities while associated with this University, I do not see this as a viable alternative.

Moreover, it would not answer my concerns that lead me to the conclusion that dismissal is appropriate.

/s/ David J. Skorton
David Skorton
President, The University
of Iowa

BEFORE THE UNIVERSITY OF IOWA FACULTY JUDICIAL COMMISSION

IN THE CONSOLIDATED PROCEEDINGS RE: DR. ADEL AL-JURF

To President David Skorton:

Faculty Judicial Panel Report
in the matter of Dr. Adel Al-Jurf

The University of Iowa, in a Notice of Charges from Provost Jon Whitmore dated June 13, 2003, charged Dr. Adel Al-Jurf, Professor of Surgery, with six instances of violation of professional ethics and academic responsibility. Dr. Al-Jurf responded with a grievance against his department chair (and two other faculty members) and a challenge to the University charges. To adjudicate both actions, a Faculty Judicial Panel was appointed in the fall of 2003, consisting of Professors R. David Arkush (History), Stewart Ehly (Psychological and Quantitative Foundations), and Clark Stanford (Dows Institute for Dental Research). In some 25 hours of formal hearings lasting through most of April 2004, the panel heard argument from counsel on both sides and sworn testimony from 13 witnesses, including Dr. Al-Jurf (and, via videotape, from another witness in Pittsburgh before a University lawyer). Our findings rely substantially also on a documentary record of many hundreds if not thousands of pages.

Below are, for each of the six charges (arranged in approximate chronological order; the numbers and

headings are ours) the exact University's charge from the Whitmore letter, a discussion of the evidence the panel found pertinent, and our findings regarding the charge. Following these are our findings concerning Dr. Al-Jurf's complaint, and finally, our recommendation for remedy.

At the outset, we note that the University bears the burden of "proving, by clear and convincing evidence in the record as a whole, that the faculty member violated . . . University policy as stated in the Notice of Charges" (Section 29.7h Operations Manual).

The first four University charges are of violations of Section 15.4 of the University of Iowa Operations Manual, "Responsibilities to Colleagues."

"As a colleague, the faculty member has obligations that derive from common membership in a community of scholars. He or she respects and defends the free inquiry of associates and avoids interference with their work. In the exchange of criticism and ideas, he or she shows due respect for the rights of others to their opinions. He or she refrains from personal vilification, and acknowledges contributions of others to his or her work. When asked to evaluate the professional performance of a colleague, the faculty member strives to be objective,"

CHARGE 1: INCIDENTS WITH ANESTHESISTS, 2000

"A pattern of unprofessional behavior in the Operating Room documented in January, 2000 and running through August, 2001, resulting in a work environment for members of the Department of the Anesthesia which led them to consider declining to provide further anesthetic care for surgical cases." (Notice of Charges, Paragraph 1d)

The following incidents, related to the University's first charge, deal with people who are no longer at the University and therefore what follows is based on the written record made at the time and was not discussed at length in the testimonial phase. We are not making judgments of individual incidents but are making the following findings as a means to evaluate the development of a pattern of behavior at the time.

3/20/00 incident, professional behavior violation reports. On March 20, 2000 two incidents were reported of alleged violation of professional behavior concerning an incident in front of an alert patient. Heather McClanahan CST [surgical technician?] wrote of "cursing," "throwing his gloves." "He was bitter . . . We don't do what he likes. Nothing goes the way he likes." "Uncomfortable for the entire staff." Nurse Sue Kloos, RN, wrote that Dr. Al-Jurf, "asked where I was from that I would do it this way. His face was inches from my own. . . . I felt ridiculed by Dr. Al-Jurf. . . . He insinuated I was from another planet. . . . I am not accustomed to filing these reports. It just really bothered me that the patient had to be witness

to such poor behavior by a surgeon. Dr. Al-Jurf continued to yell. . . . swore at the scrub tech. when she was attempting to gown and glove him." (U29)

6/22/00 Thinakaran incident. Dr. Sheela Thinakaran, an anesthesia resident, reported that on June 22, 2000, after she had telephoned Dr. Al-Jurf to ask about feeding for a patient of his, while she was talking to the patient's family and another resident, Dr. Al-Jurf "came and grabbed me by the arm and started shouting at me in front of everybody for bothering him again and again regarding the feeding. He did not give me a chance to explain. I felt numb and insulted. I just shut my mouth and did not say a word." Dr. Steve Lillehaug, who was also present, told Dr. Al-Jurf that this was not the way to talk to a resident, and suggested discussing it elsewhere, but Dr. Al-Jurf "continued to shout at both of us in front of everyone." "I was very upset with this whole incident and astonished to [be] humiliated for doing my job." (Thinakaran letter to Dr. Brown, 8/14/00, U70 p.8; *also* UI 116).

10/20/00 Mensink incident. Dr. Fred Mensink, an anesthesia resident, reported that on October 20, 2000, toward the end of an operation, when asked by Dr. Al-Jurf to give patient blood, he suggested an alternative; Dr. Al-Jurf then stopped operating, became irate, accused Mensink and whole anesthesia department of harming patients. "He then proceeded to give me a verbal barrage." "The nature of this was distasteful as he alleged all sorts of improprieties on our department's behalf towards patient

care including [that we] have killed two of his patients recently." . . . After the 'crisis' passed Dr. Al-Jurf chose to mock me by asking me why I came to Iowa. . . . [His behavior] was "inappropriate and abusive" He "got quite upset and started yelling about how we (anesthesia) have killed two of his patients in the last month . . . [H]e tried to belittle my academic performance. . . . The professional conduct of Dr. Al-Jurf was unlike any I have seen before. . . " (emails to Dr. Brown, 10/24/00 and 10/30/00, U69 p.2 and p.1)

This incident was witnessed by Dr. Patrick J. Duey, who reported that Dr. Al-Jurf's "first remarks were accusatory and with a raised voice . . . over the next 15 to 30 minutes . . . continued to speak very loudly, at times almost screaming . . . incredibly unprofessional. . . . Dr. Mensink at no time raised his voice and continued to try to bring the conversation back to the case at hand. . . . Dr. Al-Jurf made a statement accusing the anesthesia department . . . of killing 2 patients in the last several months . . . also made condescending and derogatory statements about Dr. Mensink." (U70 p.12).

This is supported by Becky Pearson, RN, who also witnessed the incident and wrote to Dr. Mensink that Dr. Al-Jurf went "ranting on and on . . . yelling . . . speaking with disrespect and contempt," while "you remained professional and polite" (U70 p.14; *also* U121).

Aker incident, 2000. A nurse anesthetist, John Aker, CRNA, reported in October 2000, that "a few months ago" while providing anesthesia for Dr. Al-Jurf's patients, that Dr. Al-Jurf for "the entire day" complained about Aker's anesthetic management: he "loudly complained . . . 'why do I have to keep telling you this,' then "asked me for my wife's phone number 'so I can tell her about your behavior in the operating room.' "I find Dr. Al-Jurf to be confrontational with the anesthesia team despite our best efforts. . . . I personally would rather not be involved" in the care of his patients. (10/30/00 letter to Dr. Brown; U70 p11; *also* U118).

Other incidents, 2000 and earlier. Though less well documented, there are indications of a number of other incidents. Dr. J. Steven Hata reported being called urgently to mediate an argument when Dr. Al-Jurf "was shouting at [Dr. Lillehaug] in a patient care area." On another occasion, Dr. Al-Jurf shouted at Dr. Hata on the telephone, and in a third incident, Dr. Al-Jurf became angry after Dr. Hata had questioned a request of his. Dr. Hata concluded that Dr. Al-Jurf "would benefit from a more collegial approach" including "limitation of emotional outbursts in patient settings, and the willingness to evaluate and discuss new approaches to patients problems from an evidence based stand point" (10/30/00 letter to Dr. Brown U70 p.10; *also* U30)

There are indications that such conflicts preceded 2000, perhaps going back many years. In January 2000, Dr. Al-Jurf wrote to Dr. Brown about "this

recurring discord between abdominal surgeons and anesthesiologists over muscle relaxation"; he referred to three specific incidents in 1999. (FM105). Most striking was testimony before the panel on 4-9-2004 from Dr. Tanya Oyos, professor of anesthesia, of an incident occurring probably in the early 1990s in which she felt physically threatened. She testified that during an operation, Dr. Al-Jurf leaned over the ether curtain and yelled at her, then came around to the head of bed and got very close to her face; she felt backed up against the anesthesia cart. She testified that no one else ever did anything like that. She also reported witnessing other incidents: she saw him slap a resident's hand and take the instrument; another time he made a resident go to the corner of the operating room for a period; and instances in scheduling when he was badgering, insistent, not professional.

Seriousness of this pattern. Dr. David Brown, head of the Department of Anesthesia, was sufficiently concerned to meet with Dr. Al-Jurf on October 30, 2000. According to his file memo of that day, he told Dr. Al-Jurf that "his behavior crosses the line to unprofessional behavior on more occasions than I believe any other surgeon here. . . . This unprofessional behavior is characterized by yelling, both in the operating room and the SICU, a lack of collegiality and sense of team . . . , personally demeaning statements directed both at faculty, residents and CRNAs, and on one occasion, physical contact during a confrontation with one of our residents in the ICU." "I asked Dr. Al-Jurf to repair these professional

relationships during the next three weeks. . . . If he has not made good faith effort at repairing these relationships, I informed him that I would recommend not providing further anesthetic care from him until this is resolved." (10/30/2000 Brown memo to file, U31; *also* U114; *also* U70 p.5)

Findings related to Charge 1: Without ruling on these incidents individually, we find that taken together, the evidence is sufficient to prove clearly and convincingly an early pattern of repeated behavior in which Dr. Al-Jurf became angry, raised his voice, at times shouted, refused to listen, and acted in an overbearing way toward professional colleagues who were subordinate to him in rank and power. Rather than respect their views or engage in reasoned dialogue, he bullied and at times made personally demeaning statements or insinuations. On a few occasions he touched or approached so closely that people felt physically threatened.

Such behavior is in contravention of the University's standards of professional behavior. The pattern of behaviour demonstrated, in violation of UOM 15.4, a repeated lack of respect for the opinions of others, interference with their work and vilification. Further, it is clear that Dr. Al-Jurf had been put on notice about the seriousness of his behavior in 2000 (U070).

Charge 2: Clinical Cancer Center/Hostetler, 2002

"A pattern of unprofessional behavior with colleagues in the Clinical Cancer Center in which you subjected numerous individuals to vilification and verbal abuse culminating in the need for a Remediation Plan which was agreed to and signed by you in July 2002." (Notice of Charges, Paragraph lc)

Relevant documents: U013, U088 pp 6-11 and 20-21, U018, U019

Testimony and documents suggest hostile relationships between Dr. Al-Jurf and certain Cancer Center colleagues. A 1993 memo speaks of "personal antagonism" to the point of not speaking to each other between him and Dr. Peter Jochimsen (U11). After Dr. Jochimsen retired in March 2002, Dr. Al-Jurf apparently expected to succeed him as Director of Surgical Oncology, and when the position went to Dr. James Howe instead, Dr. Al-Jurf, according to Dr. Roger Gingrich who witnessed it, "railed for 15 minutes against Howe, using SOB and bastard multiple times in an angry and agitated manner . . . impugned his surgical skills, his arrogance in asking for a raise, a new parking space and PJ's office" (U12). Dr. Al-Jurfs attitude has not changed: in his testimony to this panel he called Dr. Howe, "evil and a demon."

As part of this feud with the other surgeon in the surgical oncology unit (Dr. Howe), Dr. Al-Jurf pressured the staff nurse who worked for them both, Michelle Hostetler, RN, to stop working for Dr. Howe,

on the grounds that she was overburdened (although she claimed she was not). He could not stand to share her with Howe (he told Gingrich), and he became more and more insistent that she stop working for them both, which she did not want to do. At least two such confrontations left her in tears.

The nurse manager, Jane Utech, RN, reported concerning the May 23, 2002 incident, Dr. Al-Jurf "lost his temper and yelled at her behind closed doors" for following up and working with Dr. Howe's patients during the assigned time with Dr. Al-Jurf; "his voice was loud enough that most of the staff could hear him outside of the room" (U13). Dr. Gingrich's handwritten notes read "Michelle H. taken into an exam room by AA and yelled at . . . reduced to tears and left for the day" (U104). Dr. Al-Jurf then came to the nurse manager Utech to demand that Ms. Hostetler be assigned solely to him or, according to her notes, "there would be another explosion" (U13). Ms. Utech refused and there was another explosion, on June 5, 2002. Again from her notes: "Michelle came to my office very distraught and tearful after a phone conversation she had with Dr. Al-Jurf. He told her that she MUST make a decision regarding who she wanted to work with. . . . She has felt pressured . . . against her wishes. . . . Dr. Al-Jurf told Michelle that he did not want her in clinic the next day if she had not made a decision" (U13). These incidents prompted Dr. Gingrich, as associate director for clinical affairs at the Center, to write to Dr. Al-Jurf that his "intimidating encounters" with nurse

Hostetler were "unacceptable," "harassing and inappropriate and cannot be accommodated." " . . . you are creating an atmosphere of intimidation amongst the nursing staff. . . ." (U18). These incidents were confirmed in testimony to the panel from Drs. Howe and Gingrich and nurse Utech. Nurse Hostetler did not wish to lodge a complaint or testify against Dr. Al-Jurf, with whom she says she has worked very well for many years. Nonetheless, she did confirm these two incidents in writing a few days after the second, in a memo "not to be shared, under any circumstances, with Dr. Al-Jurf" Dr. Al-Jurf submitted the memo in evidence (FM35). She wrote: "Dr. Al-Jurf asked me to step into Exam room#2 . . . He appeared irritated and stated that I had not accompanied him to see our first three patients because he believed I was working on issues pertaining to Dr. Howe's patients. He was shouting and very visibly angry . . . He demanded that I choose between either himself or Dr. Howe and he walked out of the room." In the same letter she then outlined the incident on June 5, 2002 in which "Dr. Al-Jurf paged me in the afternoon and stated that the issues between he and Dr. Howe were again bothering him. He would not tolerate sharing anything, especially a nurse with Dr. Howe. He stated he wanted a decision from myself . . . that moment. He then began shouting, stating he would not longer be "put off."

These and other incidents (on July 5 he rudely turned away several patients he had been scheduled to see

(U20)) lead the department and college administrators to require Dr. Al-Jurf to go to Chicago for psychiatric evaluation. The diagnosis was that he had no major psychiatric illness, but a personality disorder with "narcissistic features" characterized by "an enduring pattern of entitlement, grandiosity and self-absorption which can interfere with one's personal and professional interactions." Recommendations included an anger management course, reduced clinical load, psychotherapy, and that he "be reminded of the standards expected . . . as to behavior and interaction in the workplace" (FM 40b).

In July 2002, two remediation plans were drawn up and signed by Dr. Al-Jurf and his department head Dr. Carol Scott-Connor. One specified a reduced clinical workload (FM 41), the other concerned resident training (in response to matters discussed below under Charge 5) (FM 45). The latter included the sentence, "You will maintain an appropriate and professional environment in the operating room and in all person interactions with resident physicians and medical students," and warned that non-compliance "could lead to dismissal" (FM 45).

Findings related to Charge 2: The evidence taken as a whole clearly and convincingly demonstrates that Dr. Al-Jurf's overbearing pressure on Nurse Hostetler in May and June 2002, apparently motivated by his antipathy toward Dr. Howe, was unprofessional behavior, interfering in her work, and creating a hostile environment. Such behavior is in contravention of the University's standards of

professional behavior (UOM 15.4). He was again put on notice that his conduct was unacceptable and continuation could have serious consequences (FM 41; U 18; U17).

CHARGE 3: BALLINGER INCIDENT, JAN. 2003

"On several occasions, you reportedly subjected colleagues to personal vilification and verbal abuse in a manner that creates an unacceptable work environment for them. These occasions included: . . . (b) The incident of January 22, 2003, in which you subjected Dr. Beth Ballinger, in front of numerous students and colleagues, to vilification, physical assault and verbal abuse during rounds in the Surgical Intensive Care Unit. That incident is also subject of the May 2, 2003 finding by the Office of Affirmative Action that there was a reasonable basis to believe that both the Policy on Sexual Harassment and the Policy on Violence had been violated. (Notice of Charges, Paragraph 1b)

Related documents are U007, U008, U108, U109, U110

Dr. Beth Ballinger was an assistant clinical professor at the time of this incident.

The Ballinger incident centers on a sequence of events associated with a patient admitted to UIHC for peri-operative care affected by chronic alcoholism. As with the Fitzpatrick incident (Charge 4), the parties agree on the general elements to the main events, while varying markedly on their motivation. On January 22, 2003, as Dr. Beth Ballinger engaged

in rounds in the Surgical Intensive Care Unit (SICU), Dr. Al-Jurf verbally assailed her: " . . . 'any moron can see,' and he pointed in the room at the patient, 'that this patient is no better off than before he came here.'" (FM 135, Record of the URIC Professional Practice Subcommittee, Statement of Dr. Ballinger, May 2, 2003). This was in front of residents, medical students, and nurses, 10 people in all. Dr. Al-Jurf earlier had performed a splenectomy on that patient, left recommendations for care, and was upset that his recommendations were not followed. Al-Jurf, in his testimony, admitted that he probably touched Ballinger during the incident – all witnesses confirmed such an action but disagreed on the extent and nature. Ballinger, in her testimony, seemed more upset by Al-Jurf's verbal behavior than the physical contact.

Ballinger testified that patient care was consistent with recommended procedures; Al-Jurf strongly disagreed and had recommended an alcohol drip. Other testimony from Dr. Hata (testimony on 4-6-04) established that the drip procedure is not considered appropriate for an individual with the characteristics of Al-Jurf's patient.

As with the Michelle Hostetler incidents described above, Dr. Beth Ballinger said that she was afraid to make a significant claim or action for fear of making a difficult working environment even more hostile.

She did report the incident, however, and the University responded both through the Office of Affirmative

Action and the Professional Practices Subcommittee. Testimony from William Hesson, Senior Associate Director of the UIHC, established that a 29-day suspension was imposed by UIHC, and the Office of Affirmative Action found against Dr. Al-Jurf in regards to this incident (U010).

Findings related to Charge 3: The documentation on this incident with its many witnesses is ample and leaves no doubt about what happened. The Panel finds that Dr. Al-Jurf did violate the UOM 15.4, Responsibilities to Colleagues. The record demonstrates clear and convincing evidence of vilification. His sarcastic and abusive criticism of a junior faculty member and refusal to listen, in front of other people, exceeded the boundaries of acceptable professional behavior in any University context.

CHARGE 4: FITZPATRICK INCIDENT, APR. 2003

"On several occasions, you reportedly subjected colleagues to personal vilification and verbal abuse in a manner that creates an unacceptable work environment for them. These occasions included: (a) the incident of April 23, 2003, in which you subjected Lynn Fitzpatrick CRNA, in front of numerous colleagues, to vilification and abuse during an operating procedure. . . ." (Notice of Charges, Paragraph 1a)

Related documents are U001, U002, U005

The basic elements of the incident appear in both University and Dr. Al-Jurf's written statements to

this panel. During an operation in which Lynn Fitzpatrick assisted Al-Jurf, the two disagreed on the administration of Lasix, a diuretic. Both parties, during their testimony to this panel, provided different rationales for their positions. At the time of the incident, a third party, the staff anesthesiologist, was called in and administered the medication requested by Al-Jurf. Al-Jurf, through his actions, agreed that he had treated Fitzpatrick in an unfair manner – he apologized. The Panel heard abundant testimony from Fitzpatrick that such an apology was not a sufficient remedy for the emotional distress that resulted from his actions.

The day after the incident, Ms. Fitzpatrick wrote: "Dr. Al-Jurf would not listen to anything I said. I felt Dr. Al-Jurf was not being a team player and demanded full control. I felt none of my past experience mattered. . . . Dr. Al-Jurf created a hostile working environment. . . . It is very demeaning and humiliating to be treated in this manner." (U002) On the day of the incident Dr. Tanya Oyos wrote that she found Fitzpatrick in the locker room "pacing and crying . . . so upset it took her awhile to compose herself before she could speak. The first thing she said was 'no one deserves to be treated this way' and began crying again." She said Dr. Al-Jurf had begun to "yell, verbally berate her and denigrate her credibility, competence and abilities. Lynn began crying again and said she could not go back to the room Dr. Al-Jurf was operating in." (U001, Oyos 4/23/03 letter to Brown) Dr. Oyos later said that she had never seen Lynn

Fitzpatrick, who had years of experience and had dealt with many difficult situations, cry like that before. (U005) Dr. Al-Jurf, in his testimony, described a positive working relationship with Fitzpatrick that was affected negatively by his actions on April 23. Fitzpatrick was very clear in her testimony that she would not work again with Dr. Al-Jurf.

Findings related to Charge 4: The panel finds that, by clear and convincing evidence, Al-Jurf actions, no matter how motivated, caused distress to a colleague. His behavior failed to give due respect to the rights of others to perform their work, as described in UOM Section 15.4.

University Charges 5 and 6 relate to alleged violations of Section 15.2 of the University Operations Manual, "Responsibility to Students" which includes the following:

"As a teacher, the faculty member has a responsibility . . . for creating a climate that encourages the student's endeavors to learn. The faculty member should exemplify high scholarly standards and respect and foster the student's right to choose and pursue his or her own educational goals." and *"The faculty member owes to the student and the University a fair and impartial evaluation of the student's work."*

The alleged violations deal with specific issues of Dr. Al-Jurf failure to "create a climate that encourages the student's endeavors to learn . . . demonstrating respect for the student." The University makes this charge based on two sets of events: (1) the submission

of a petition by the surgery residents following complaints from residents since 1996 which was part of the remediation plan started in July 2002 (Notice of Charges, Exhibit D) and (2) an incident concerning a chief resident, Dr. Yi-Horng Lee resulting in intimidation and threatening behavior following a letter sent by Dr. Lee to Dr. Kealey (Vice Chair, Department of Surgery) questioning Dr. Al-Jurf's judgment and skills during an OR procedure on February 12, 2003. The University also makes the charge that Dr. Al-Jurf then violated the University's Anti-retaliation policy (UOM II-11.3).

CHARGE 5: RESIDENTS 1996-2002

"Documented complaints of Department of Surgery residents beginning in 1996 until the present indicating you continue to exclude residents from participation in surgical cases and have created a disruptive and hostile working environment for the residents in the Operating Room, resulting in a failure to abide by the signed Resident Remediation Plan of July 2002." (Notice of Charges, Paragraph 2a)

1996 Resident Evaluation of Staff. (Related documents are: U040, U041, Notice of Charges Exhibits E and F, FM1, FM 5, FM 6) The documentation provided by both the University and the defense concerning issues regarding resident education start in 1996 with Notice of Charges Exhibit E. This written exhibit is an anonymous compilation of answers to a series of questions regarding education and issues

between faculty and residents. The answers in this document, as one would expect, are broad in their response, indicating Dr. Al-Jurf was excellent in the OR at teaching, especially technical aspects of surgery while others are quite critical. It is interesting that the answers indicating no problems do not go on to praise Dr. Al-Jurf while the negative answers go on at length about specific issues and aspects of behavior and their impact on patient care. Some answers address perceived concerns of gender and inconsistency of treatment of one resident to another. In this document (question three, addressing ways to improve teaching efficiency) there are a series of answers stating Dr. Al-Jurf is trying to do too many surgeries, there is a perception by some that he is not current in his knowledge but most importantly he should be more patient with the students, less derogatory and should allow more student interaction in the care of the patients. The document then goes on with individual opinions that he can teach well when not rushed but often elicits a desire on the part of some to avoid interactions with him due to the negative interactions and hostile work environment. There are comments by individuals that he does not report complications and cases are reported as having been done by the resident when in fact they were not.

This document was followed by minutes from a meeting (UI 040; *also* Notice of Charges Exhibit F) with Dr. Shirazi (program director at the time), Carol Scott-Connor and Evelyn Bollinger dated November 1, 1996. This meeting outlined the need to reduce the

caseload and improve teaching and communication. Part of this was to increase the involvement of senior residents in the surgical care, needs to improve logging of cases, improve his interactions with residents and "ensure ethically that things are going well." This meeting appears to have been an attempt to bring out issues and start afresh. Dr. Al-Jurf agreed to reduce his work load (come off night call) at this point. The document does refer to Dr. Coppola (resident) leaving the OR in July 1996, followed by a letter of reprimand by Shirazi (Program director). The memo (Notice of Charges, Exhibit F) indicated that this work reduction would be re-evaluated on a weekly basis although the documents provided for this case do not reflect any ongoing reviews or post-tenure reviews by the department

The faculty judicial panel finds that while the record contains only one set of written assessments of Dr. Al-Jurf's by residents (in 1996), there were problems and considerable dissatisfaction with him at that time.

Department of Surgery's Resident Petition, August 2001. (Related Documents are: U042 and Notice of Charges, Exhibit G; letter from AJ to Dr. Scott Conner dated 8-13, 2001 (U041); U042; FM6; FM9; FM44 [second resident review dated 4-27-03]).

There appears to have been a series of incidents, the last of which was Dr. Alvina Won abruptly leaving an OR case in August of 2001, which led to significant consternation in the department and Dr. Al-Jurf's

letter about his concerns to Dr. Scott-Connor (U041) and the subsequent resident's petition dated August 31 (U042). In mid August of 2001, Dr. Al-Jurf discussed a number of issues in a memo (U041), the content of which discusses his concerns that residents cannot perform certain cases and that he has a different assessment than other faculty of the role of resident training within the clinical setting than other faculty, something he will not compromise on. As outlined in U041, the Department of Surgery was having problems with recruitment of residents to the training program and unrest among the current residents in the program. Dr. Al-Jurf did not acknowledge (by either the tone or the content of the U041 letter) that he accepted any level of responsibility for the educational issues in the department. In fact, as a part of the reoccurring pattern, he vilified both the current residents and the current program director as the cause for the discontent. It was especially telling to the panel that in Dr. Sharp's testimony (4-1-04), as Director of the Surgical Residency program, he did not want Dr. Al-Jurf to return to teaching in his program due to the detrimental impact Dr. Al-Jurf has had on morale and recruitment.

A petition from the residents was presented to the Departmental executive officer (Dr. Carol Scott-Conner) on August 31, 2001 regarding Dr. Al-Jurf's actions and residents' impressions of his teaching style and capabilities (U042). This petition was stated to be the first of its kind (Dr. Sharp's testimony on

4-1-04) although other faculty has had related interactions with the residents. It should be noted through the results of a departmental review panel appointed by Dr. Scott-Connor following the petition indicated that the level, severity and recurrent nature of Dr. Al-Jurf's behavior issues regarding teaching were not considered the "norm" in the Department of Surgery (U045, page 2). The petition outlined areas of concern that led to the departmental DEO naming a task force to review and report on the petition to the Dean of the COM. The petition presented three complaints: (1) Dr. Al-Jurf "consistently excluded residents from participating in surgical cases," (2) he "consistently made derogatory comments to the residents and staff within the OR," and (3) he was inconsistent with his teaching of different students and he was not following current concepts of evidence-based care (U042; *see also* FM44). The incident that appears to have elicited the petition was an incident in the OR with Dr. Alvina Won. In testimony, Dr. Al-Jurf indicated that the resident was not performing a surgical closure in an appropriate manner and this led to her leaving the OR when he took over. FM6 document outlines a letter of apology from Alvina Won to AJ dated 9-6-2001, a week after the petition is submitted, for her leaving the OR. A review committee was appointed by the DEO and a November 15, 2001 report was made to the Dean (FM21).

The three specific aspects will be considered in turn.

Excluding from performance of surgical cases. This issue reflects more on the tension in the OR between

the residents' desire for direct hands-on experience and Dr. Al-Jurf's desire to manage patient care. There will always be times when the attending staff need to perform specific aspects of a case either due to complications, demonstration or patient's desires. This was reflected in the report from the review committee (U045) and the remediation plan with a requirement for a percentage of cases performed by residents (to fulfill index case requirements) but allowed demonstrations in the first week of the rotation. It is the opinion of the panel that the clinical decisions by Dr. Al-Jurf to allow residents to perform a certain amount or kinds of surgery, is not considered relevant to the ethics charges. There was insufficient evidence that this constituted a violation of the ethics policy described in UOM 15.2.

Derogatory Comments in the Operating Room. Various documents indicate disparaging and derogatory comments by Dr. Al-Jurf to residents, a matter of significant concern to the panel. The creation of a hostile learning environment runs counter to the entire mission of the University and as such represents the most serious of the education based ethics charges.

As a part of the review process following the submission of the Resident's petition (U042), Drs Sharp, Hoballah, Chang and Sandler (Sharp Committee) performed a review and submitted a report to Dean Ketch dated November 15, 2001 (U045; *also* FM21). In this report they outline the results of interviews

with residents (25 of the 40 residents were interviewed, Dr. Sharp's testimony 4-1-04). The report found a "general consensus of the residents' staff that they feel belittled due to his behavior. More specifically he frequently yells at them, insults their technical capabilities . . . " (U045). The Sharp Committee report went on to describe other aspects of a hostile learning environment created in the OR. Dr. Al-Jurf in an interview with the committee (U040) indicated that he admitted there was hostility but attributed it to the residents' unreasonable demands, and claimed that intimidation was a result of the relative positions of residents and senior staff. "Any comments he [Al-Jurf] may have made that have been interpreted as disrespectful of their person or belittling were not intended as such." (U045) This statement appears to indicate that he did not recognize that his comments were belittling. The departmental review panel went on to recommend a six month period of evaluation in the fall of 2002 with reduced workload and increased index cases being performed by the resident to a degree (two out of three cases) that the residents could reasonably document the educational experience. The Sharp Committee report outlined a demonstration period where Dr. Al-Jurf was able to perform more surgery along with recommendations for reduced case load and minimal impact on financial repercussions to Dr. Al-Jurf. These are the same elements that were incorporated in the remediation plan put into effect in July 2002 eight months after the report was submitted to the Dean's office.

Remediation Plan (*July 2002; Notice of Charges, Exhibit H; also U047*). Following a series of issues and incidents in the spring of 2002, Dean Kelch ordered the implementation of a remediation plan (U046) described in the Sharp Committee report. This is a plan that was agreed to and signed by (U047) by Dr. Al-Jurf following his return from the Rush psychological evaluation in July 2002. This plan presented a percentage of cases the residents were to perform and an order to "maintain an appropriate and professional environment in the operating room and in all person(al) interactions with resident physicians and medical students."

In April of 2003, the University provided what appears to be a follow-up review of Dr. Al-Jurf by the residents (0048; Notice of Charges, Exhibit I), although it is of a more limited number than in the initial complaint (6 out of a possible 9 residents in the 4th and 5th year of the program – those that would have been on Dr. Al-Jurf's service). The document (U048) is not signed and provides essentially summarized responses. There is a suggestion that there was considerable concern about Dr. Al-Jurf's "Surgical judgment" (U048, page 2, line 4) but that again, "personal criticism[s] were the worst aspect of the experience." (U048, Page 2, line 5). There appears to be a general sense of improved workload by many of the responders but the results varied considerably resident-to-resident. This second survey (dated April of 2003) ends with a disconcerting statement that "most residents felt that the most negative aspect of

working with Dr. Al-Jurf has become his surgical judgment. This issue was not addressed in the previous petition and may represent a significant change." (U048) This accusation may or may not be accurate but the panel does have concern about the perception of poor judgment would have on the educational experience for the student's (respect, educational impact, etc.) and as such does represent a factor in considering the impact of Dr. Al-Jurf's behavior in creating a hostile educational environment.

Testimony suggests that not all of the residents had been involved in rotations with Dr. Al-Jurf at the time the surveys were completed. It should also be noted that Dr. Al-Jurf, in his testimony before the faculty judicial panel (4-14-04) stated that he did not need then or now the remediation plan.

In his testimony to this panel (4-14-04), Dr. Al-Jurf conveyed a disparaging and belittling attitude to the opinions voiced by residents concerning their educational experiences. They are, he stated, "experts in confidentiality and cover-up," and he alleged that Dr. Won had been put up to the petition by Dr. Scott-Connor as revenge for his earlier accusations against her of patient misdistribution in the clinic.

Findings related to Charge 5: In summary, the panel finds that the tension present in the OR creates an environment in which faculty need to be especially aware of their role as educator clinicians in *managing* excellent patient care. The issue in this charge is not over a percentage or relative role within a surgical

experience that a resident/student participates in but the manner in which the educational process takes place. This panel finds clear and convincing evidence that Dr. Al-Jurf created a hostile educational environment in the operating theater on multiple occasions to residents under his training. Further, he provided students a poor example of how colleagues and support staff are to be treated. Students can learn but be terrified in the process, unwilling to question or probe for alternatives, reasons, rational, and so on. This tension and fear leads to an environment where questions are not asked, decisions are not challenged and in the end optimal patient care is not provided.

CHARGE 6: YI-HORNG LEE INCIDENT, Feb. 2003

The incident February 20, 2003, in which you subjected Dr. Yi-Horng Lee to intimidating and threatening behavior following his letter to Dr. Kealey of February 16, 2003, questioning your judgment and skills during procedures on February 12, 2003. There is also a reasonable basis to believe that behavior constitutes a violation of the University's Anti-Retaliation policy. (Notice of Charges, Paragraph 2b)

(Related Documents: U050 though U058; Dr. Lee's Videotaped deposition on 4-15-04)

The University has presented a charge of ethics violation in regards to Dr. Al-Jurf's educator role with Dr. Yi-Horng Lee. Dr. Lee was one of the senior

residents in the Department of Surgery during 2002-2003. Dr. Lee reported to Dr. Kealey (the Vice Chair of the department) in a letter dated February 16, 2003 regarding an incident in the minor operating room on February 12 (U050). Dr. Lee expressed concern that the patient's wishes were not honored by Dr. Al-Jurf (U050) over the patient's objections. The issue of the ethics charges in this incident does not relate to the patient care provided nor the manner that informed consent was obtained or not. The ethics charge primarily concerns the manner in which Dr. Al-Jurf addressed Dr. Lee's concerns in the informed consent process and Dr. Lee's concerns about further changes in clinical signs with the patient enlarging mediastinum following placement of the left side port (U050, Lee's testimony 4-15-04). Dr. Lee stated in U050 and in testimony that he felt patient care and safety was being endangered by these actions.

Charge of retaliation: As a response to the Dr. Lee incident, the University charged that Dr. Al-Jurf violated the University policy on retaliation (UOM 11.3). Following the submission of Dr. Lee's letter (U045) on 2/16/03, Dr. Carol Scott-Connor notified Dr. Al-Jurf on 2/18/03 of the letter (U051) and outlined that the remediation plan's workload restrictions were to be re-implemented and a formal review of the OR incident would occur. This letter does not specify that Dr. Al-Jurf should not contact the complainant (but does request him to contact *her* if he had questions). In an e-mail dated 2/22/03 (U053; an e-mail Dr. Al-Jurf was sent, too), Dr. Scott-Connor stated

that the department had attempted to protect Dr. Lee's identity until he was off service and that one of the department's administrators (Sally Rodgers) had specifically instructed Dr. Al-Jurf to not attempt contact with Dr. Lee (also stated in Dr. Al-Jurf's interview with the department on 4-25-03 outlined in U057).

Dr. Al-Jurf proceeded to discuss this letter with Dr. Lee on 2/20/03 and this meeting constitutes the basis of the charge of retaliation. Dr. Lee's described this meeting on 2/20/03 (U055) in which Dr. Al-Jurf asked about the background for the initial letter to Kealey (U045) and asked Dr. Lee to retract the letter, which he refused to do. Dr. Lee stated both in U055 (Notice of Charges, Exhibit J), dated March 8, 2003, and in oral testimony that he found the educational experience to be positive with Dr. Al-Jurf. He did believe there were instances (not detailed) in which peri-operative patient care and judgment was a concern. He re-iterated his concern about informed consent, patient safety and resident educational experience which he obviously still felt strongly about in April of 2004 in his oral testimony.

The basis of the retaliation charge is Dr. Al-Jurf's statement outlined in Dr. Lee's second letter to Kealey dated March 8, 2003 (U055), which he acknowledged making in his oral testimony on 4-14-04, that "he was very sorry that he had trained me [Dr. Lee] and had been good to me in the operating room. He told me that he had specific guidelines that allowed him to take a week to demonstrate to the

residents his way of operating and that he should give residents only two out of three cases. He had given me more that [sic] that amount of operating but he told me that he would no longer do that for the residents. He told me that because of my letter, all residents coming onto his service from now on will suffer from less operative experience. He also told me that I was going to be in trouble and I would have to answer to the Dean of the medical school." (U055; paragraph 4). This letter was a part of a departmental review (4-25-2003) outlined in U056. In this departmental interview with Dr. Lee he did not indicate he felt threatened personally but that the residency as a whole was. Dr. Al-Jurf was then interviewed concerning the same incident April 25, 2003 (U057). Dr. Al-Jurf admitted that he did get a call from Lee in regards to the radiology findings but that he thought there was a "deficiency in [Dr. Lee's] common sense and knowledge and that Dr. Lee failed in fulfilling his duties as a chief resident" (U057, page 2, paragraph 2). This statement, reinforced by oral testimony is difficult to understand, given Dr. Al-Jurf's responsibilities as an educator. If asked a direct question (patient concern or pedagogical) it was his responsibility to guide the learner in finding answers and not respond in an acrimonious and condescending manner as outlined in his interview (U057), his passionate demands with Dr. Lee to retract his earlier statements (U055) and in oral testimony by Dr. Al-Jurf (4-14-04) and during Dr. Lee's oral testimony (4-15-04).

Dr. Al-Jurf's own statement to Dr. Kealey (U058) dated 4-27-03 does not deny the described incidents but does outline his interpretation of the facts. This document outlines his interpretation of events but does not reflect any personal assessment of responsibility or his role (positive or negative in the events that day). He characterizes at length his perceptions of Dr. Lee's deficiencies and failings on page 3 whereas previously he had stated praise for him (U055, Oral testimony on 4-14-04).

Findings related to Charge 6: The faculty judicial panel finds a verbal threat and intimidation to both Dr. Lee directly (" . . . in trouble and would answer to the Dean . . . ") and a more vague threat against future residents. His statement that future residents would get less operating experience, while probably made within the passion of a discussion, does indicate an intention to violate the July 2002 remediation plan in clear violation of its reinstatement by Dr. Carol Scott-Connor on 2-18-03 (U051). Therefore, the panel finds that Dr. Al-Jurf violated the University of Iowa's Operations Manual section 15.2, "Responsibility to Students" by creating a hostile educational environment, and violated UOM 10.3 regarding conduct which has an unreasonable effect of interfering with an individual's academic efforts (education). As to the charge of retaliation (Section UOM 11.3), we find that he threatened retaliation, but we have seen no evidence of actual retaliation.

Dr. Al-Jurf's Grievance Against The University

We now turn to the Grievance brought by Dr. Al-Jurf against Dr. Carol Scott-Conner, Dr. James Howe, and Dr. David Brown. It is our view that Dr. Al-Jurf's claim fails to satisfy the threshold requirements of the applicable provisions of the Operations Manual, and, in addition, lacks any significant evidentiary support in the record. We therefore find that Dr. Al-Jurf's Grievance has no merit and must be denied.

In general terms, Dr. Al-Jurf contends that Dr. Scott-Conner, Dr. Howe, and (to a lesser degree) Dr. Brown conspired to damage his position at The University. At various junctures during the hearing, Dr. Al-Jurf argued that this conspiracy included, among others, Jan Waterhouse from the Office of Opportunity at Iowa (formerly, the Office of Affirmative Action), Mark Schantz from the Office of the General Counsel, and Susan Johnson in her (now former) capacity as Associate Dean of the College of Medicine. Dr. Al-Jurf urged us to consider that this broad-based conspiracy explained the various charges and administrative actions that have been brought to bear against him. Dr. Al-Jurf provided us with extensive briefing in support of this argument, as well as a plethora of demonstrative exhibits. Dr. Al-Jurf has not, however, provided us with evidence satisfying the basic elements of the Grievance provisions.

Section 29.6a(2)(b) of the Operations Manual provides:

> *(2) Grounds for a Challenge to the Legitimacy of some Administrative Action or Non-Action. A challenge by a faculty member to the legitimacy of some University administrative action or non-action that affects the faculty member may be made through these procedures only on one or more of the following grounds:*
>
> > *(b) Unfair Impediment: that the action or non-action significantly impairs the ability of the faculty member to do what is expected of a faculty member, and that the action or non-action is not related to a reasonable institutional need or to the faculty member's performance as a faculty member,*

And, under Section 29.6f(2) of the Operations Manual,

> *In order to gain a favorable recommendation front the panel on this ground, the faculty member must show,* ***by the preponderance of the evidence,*** *both 1) that the action or non-action significantly impairs the ability of the faculty member to do what is ordinarily expected of a faculty member, and 2) that the action or non-action is not significantly related either to any reasonable institutional need or to the faculty member's performance as a faculty member.*

We read these provisions to require – at the very outset – that the grieving Faculty Member identify (i) ***specific administrative action or non-action*** that (ii) has significantly impaired the ability of the faculty member to do what is expected of a faculty member. If the grieving Faculty Member makes such a showing, the Faculty Member must still demonstrate that the administrative action of which he complains was not related to either "any reasonable institutional need or to the faculty member's performance as a faculty member."

1. *Claims Against Dr. Brown*

We start with Dr. Brown. During the time in question, Dr. Brown served as Head of the Department of Anesthesia. As we understand Dr. Al-Jurf's contention, Dr. Brown: (a) threatened to deprive Dr. Al-Jurf of operating room support from the Department of Anesthesia; and (b) was part of a broad conspiracy to drive Dr. Al-Jurf from The University.

On the first of these contentions, we do find that Dr. Brown informed Dr. Al-Jurf that the Department of Anesthesia would no longer provided operating room support to Dr. Al-Jurf (see U70 p5). We also find, however, that Dr. Brown subsequently lifted this embargo – well before this proceeding was commenced – thus, negating this basis for Dr. Al-Jurf's grievance. We further find that Dr. Brown's position – during the period that the embargo was in place – clearly related in a significant manner to both a

reasonable institutional need ***and*** to the faculty member's performance as a faculty member. Dr. Brown issued his embargo following a series of incidents between Dr. Al-Jurf and members of the Department of Anesthesia (*see our* discussion above regarding ***University Charge No. 1***). We find that Dr. Brown's position was reasonably grounded in the institutional need to maintain a professional environment in the operating room. We further find that Dr. Brown's position was reasonably based upon Dr. Al-Jurf's failure to abide by basic professional norms.

As for Dr. Al-Jurf's allegations that Dr. Brown was part of a larger conspiracy to drive Dr. Al-Jurf from The University, we simply find no evidence to support this claim.

2. *Claims Against Dr. Howe*

We have struggled, notwithstanding the voluminous materials provided to us by Dr. Howe, to identify the specific administrative action taken (or not taken) by Dr. Howe which resulted in harm to Dr. Al-Jurf. During the relevant time period, Dr. Howe served as Director of the Division of Surgical Oncology. At least nominally, he served as Dr. Al-Jurf's direct supervisor. Aside from that fact, Dr. Al-Jurf has failed to point us to ***any*** administrative action taken by Dr. Howe in his capacity as Director of the Division of Surgical Oncology which prejudiced Dr. Al-Jurf.

Dr. Al-Jurf's claim appears to rest on a generalized assertion that Dr. Howe was part of a conspiracy to

drive Dr. Al-Jurf from The University. Aside from the fact that we can find no specific "administrative action" that Dr. Howe took in his capacity as Director of the Division of Surgical Oncology to advance this alleged conspiracy, we conclude that there is no probative evidence that Dr. Howe conspired in any manner to have Dr. Al-Jurf pushed out of the Department of Surgery.

In this regard, we note the following:

- To the extent that Dr. Al-Jurf contends that Dr. Howe's handling of the Michele Hostetler situation was part and parcel of the conspiracy against him, we find, based upon the testimony provided by Dr. Howe, Jane Utech, and Roger Gingrich, that Dr. Howe's handling of this unfortunate situation was driven by Dr. Howe's desire to have Ms. Hostetler provide greater support to Dr. Howe's work, rather than a malicious desire to damage Dr. Al-Jurf's professional position;

- To the extent that Dr. Al-Jurf contends that Dr. Howe's involvement in the Yi-Horng Li [sic] incident was part and parcel of the conspiracy against Dr. Al-Jurf, we find, based upon the testimony of Dr. Li [sic] (which we find highly credible), that Dr. Howe's involvement was limited to a brief conversation, and that Dr. Howe did not pressure Dr. Li [sic] to take action against Dr. Al-Jurf; and

- To the extent that Dr. Al-Jurf contends that Dr. Howe pressured or otherwise improperly

> influenced Dr. Scott-Conner to take administrative action against Dr. Al-Jurf, we find no evidence of such conduct. In fact, we find it noteworthy that nowhere among the vast quantity of email, memoranda, and other documentation provided to us, have we been directed to any document which evidences the type of improper influence Dr. Al-Jurf suggests occurred.

In sum, we conclude that there is no basis for Dr. Al-Jurf's grievance against Dr. Howe.

3. *Claims Against Dr. Scott-Conner*

Turning finally to Dr. Scott-Conner, we note at the outset that Dr. Scott-Conner served as Head of the Department of Surgery at all times relevant to this proceeding. Dr. Al-Jurf contends that, in her capacity as Head of the Department of Surgery, Dr. Scott-Conner:

- failed to take administrative action to address effectively Dr. Al-Jurf's conflicts with Dr. Howe; and
- took administrative action, in conspiracy with others, to have him removed from The University.

On the first of these points, we find ample evidence that Dr. Scott-Conner engaged in a series of administrative action to address Dr. Al-Jurf's professional behavior on a range of fronts. We can only conclude that the remedial action taken by Dr. Scott-Conner

was reasonably calculated to improve the professional behavior of Dr. Al-Jurf in all phases of his work at The University. Moreover, we find it ironic that Dr. Al-Jurf complains that Dr. Scott-Conner's failed to interject herself squarely in the middle of his conflict with Dr. Howe, when he complains of virtually every other instance in which Dr. Scott-Conner did involve herself in his conflicts with faculty, students or staff.

On the latter of these points, we find that Dr. Al-Jurf's conspiracy theory fails in two respects. First and foremost, the ***only*** significant "impediment" that Dr. Al-Jurf has presented to this Panel consists of his suspension (with pay) from The College of Medicine in May of 2003. This suspension was imposed by Dean Robillard – not Dr. Scott-Conner. Dr. Al-Jurf has not grieved against Dean Robillard. Thus, the "administrative action" that resulted in the only demonstrable harm coming to Dr. Al-Jurf was not taken by any of the actors against whom Dr. Al-Jurf has grieved.

Second, we find that the administrative actions that Dr. Scott-Conner did take with respect to Dr. Al-Jurf did not "significantly impair" Dr. Al-Jurf's ability to perform his job. The only administrative action that could even be said to come close in this regard was the imposition of the two interrelated "remediation plans" in July of 2002 (FM41; FM45). These two remediation plans – to which Dr. Al-Jurf gave his written consent – curtailed Dr. Al-Jurf's surgical practice in some measure. However, Dr. Al-Jurf

testified that by the fall of 2003, the direct curtailment on the number of procedures and so forth imposed by these remediation plans had been all but removed by Dr. Kealey. Thus, we cannot find that the imposition of the remediation plans constituted an "Unfair Impediment."

Recommended Remedy

We have found that Dr. Al-Jurf on several occasions has violated University policies specified in the UOM. Now it remains to ask whether or not these violations, considered together, rise to a level that warrants dismissal, which the University maintains is the only appropriate remedy.

In considering this question, we find relevant the following considerations.

- He is considered to be a good surgeon, even by his detractors. A number of people have described and continue to describe Dr. Al-Jurf as technically skilled, experienced, hard-working, and good with patients. He is said to have taken on difficult and unrewarding work that others dislike, such as placing certain catheters; in that respect he could be thought of as a team player.

- Considered individually, none of the violations is of enormous severity. Two incidents which involved unwanted touching (Ballinger and Thinakaran) may technically count as "violence," but were not considered by the panel to be close to what that word

usually means. Although the University argues that Dr. Al-Jurf's behavior is a risk to patient care (a point we will come back to), it does not contend that any specific patients was harmed (although possibly this is for fear of legal liability).

- In spite of his outbursts of anger and his hostile relations with a number of colleagues, Dr. Al-Jurf has had good relations with others, the record shows, and he is clearly capable of being polite and charming.

- There was a lack of systematic review in the Department of Surgery (post-tenure reviews of all faculty, follow-up on the remediation plan, etc.). Nonetheless, since 2000 there was considerable informal and formal departmental reviews and discussions concerning the various aspects discussed in this report.

Against these mitigating considerations, however, must be weighed several others.

- He may be a good surgeon, but colleagues and students express doubts about his contributions as an effective teacher and as an active researcher.

- Although some colleagues say that they could still work with him, he has bad relations with a number of people in his department and in the hospital, such as to cause tensions and awkwardness were he to return (e.g., Dr. Oyos testified to having a list of people in Anesthesia who had asked not to be assigned with him).

- He has long been on notice as to the seriousness of his unprofessional conduct. In 2000, the head of the Department of Anesthesia notified him that unless his behavior changed, they might not continue to provide anesthetic care for him. The possibility of dismissal was raised in 2002 as part of the remediation plan which he agreed and signed to. On several occasions he stated he understood the seriousness of his actions and promised there would be no recurrences. Even though he had agreed to a remediation plan, there were further incidents, three in 2003, which now gives legitimacy to serious sanctions and underlines the likelihood of more trouble if he returns to service.

- We are impressed with the testimony of several witnesses that surgery requires a team of people with different specialties who must work together. Practitioners like Dr. Al-Jurf, who make others uncomfortable working with him (and some unwilling to work with him at all), damage morale, cooperation, and team effectiveness. Disagreements about patient care are common, we were told, and normally are discussed calmly and objectively. If, however, discussion becomes personal and heated, bad decisions are apt to result. Angry overbearing conduct, in short, undermines teamwork, impairs decision-making, and endangers patient care. Disagreeable, uncooperative people can put up with in some parts of the university, but not in health care which depends on group cooperation.

- There seems little likelihood that Dr. Al-Jurf's behavior will change. His outbursts have occurred since at least 2000 and probably well before. He shows little understanding of how and why his behavior is unacceptable. When he testified before this panel he discussed incidents not in terms of his behavior but as disagreements in which he was categorically right and the other person categorically wrong (e.g., endangered his patient). He insisted that his many years of operating experience – even if he had not read the latest research findings – meant that no one else had the right to question his judgment. He seems inordinately proud of the number of operations he performed, more than anyone else, he emphasized repeatedly, and how quickly he can do this and that procedure. Such inner pressure to operate fast and often must, we presume, predispose him to become impatient at anything that might slow him down, such as teaching residents. Dr. Al-Jurf's personality shows little inclination to admit the possibility that he may be wrong, to be introspective, or give serious consideration to the opinions of others. He testified that he does not have an anger problem, has no need for an anger management course, and at age 61 is not going to change. He maintained his behavior had never been disruptive, that he could not understand what was so bad about what he did with Dr. Ballinger, and in reference to one of his apologies that he made it only to ward off sanctions, not because he considered his

behavior inappropriate. Given all this, we think it highly probable that if he returns to operating, there will be more incidents as described.

For these reasons, and pursuant to the findings we have detailed above, ***we recommend that Dr. Al-Jurf not be allowed to return to operating at the UIHC or to maintain his position in the Department of Surgery***. We intend by this recommendation to include the possibility of dismissal, allowing him to resign, or transfer to another position that would not be associated with UIHC.

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